



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

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

MEMBERS OF THE PUBLIC MAY NOT ATTEND THIS MEETING IN PERSON

ZOOM TELECONFERENCE INSTRUCTIONS

PUBLIC COMMENT PRIOR TO MEETING:

If you wish to make a comment you are strongly encouraged to please submit your comment by 5:00 p.m. on Tuesday, May 31, 2022 at <https://www.surveymonkey.com/r/SMARTBoardComments>

PUBLIC COMMENT DURING THE MEETING:

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

1. Call to Order
2. Approval of the May 18, 2022, Board Meeting Minutes
3. Board Member Announcements
4. General Manager's Report
5. Public Comment on Non-Agenda Items

Consent Calendar

- 6a. Approval of Monthly Financial Reports - April 2022
- 6b. Consider and Approve a Resolution to continue virtual Tele/Video Conference Meetings during the COVID-19 State of Emergency
- 6c. Authorize the General Manager to execute Contract Amendment No. 2 with Nossaman, LLP Legal Services to provide legal support in several projects and litigation in an amount of \$250,000 and extend the term for two (2) years

Regular Calendar

- 7. Consent to participating in Metropolitan Transportation Commission's (MTC) Institutional Transit Pass Pilot Program – *Presented by Heather McKillop*
- 8. Approve a Resolution to Amend Fiscal Year 2021-22 Freight Budget in an amount of \$126,973 – *Presented by Heather McKillop*
- 9. Authorize the General Manager to award Contract No. IT-PS-22-001 to SPTJ Consulting, Inc. to provide network monitoring and support services with a not-to-exceed amount of \$303,219 for each Fiscal Year included in the initial three-year term – *Presented by Ken Hendricks*
- 10. Approve a Resolution Authorizing the General Manager to award Contract No. EV-PS-22-001 to WRA, Inc. for As-Needed Environmental Consulting Services for a total not-to-exceed contract amount of \$450,000 and a term of 3 years, with two additional one-year options to extend at \$150,000 per year – *Presented by Bill Gamlen*
- 11. Approve additional service on June 12 and June 26 to meet the Golden Gate Ferry service from Oracle Park – *Presented by Emily Betts*
- 12. Next Regular Meeting of the Board of Directors, June 15, 2022 – 1:30 PM
- 13. Adjournment

DISABLED ACCOMODATIONS:

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



**BOARD OF DIRECTORS
REGULAR MEETING MINUTES
May 18, 2022 - 1:30 PM**

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

MEMBERS OF THE PUBLIC MAY NOT ATTEND THIS MEETING IN PERSON

1. Call to Order

Chair Rabbitt called the meeting to order at 1:31pm. Directors Bagby, Colin, Coursey, Fudge, Garbarino, Hillmer, Lucan and Pahre were present; Directors Arnold and Rogers absent; Director Connolly joined later.

2. Approval of the May 4, 2022, Board Meeting Minutes

Director Connolly joined at 1:33pm

MOTION: Director Garbarino moved approval of May 4, 2022, Board Meeting Minutes as presented. Vice Chair Pahre second. The motion carried 10-0 (Directors Arnold and Rogers absent).

3. Board Members Announcements

None

4. General Manager’s Report

General Manager Cumins congratulated Chief Engineer, Bill Gamlen for his 13th work anniversary at SMART. Mr. Gamlen has been very instrumental to SMART over the years.

General Manager Cumins provided a brief update on the following:

- Ridership
- Muir Woods Connection
- Community Outreach

- Freight Update
- Highlight of the Month.

Ridership Update

- May average weekly ridership highest post-COVID to date, up 3% over April.
- Ridership, last Thursday was the highest to date post-COVID (1,608)
- We also carried the highest number of bikes post-COVID (1,551)
- Small decrease in disabled and senior boardings, increase in youth (15%) and large increase in adult boardings (36%)

Muir Woods Connection

- Marin Transit provides a Muir Woods Shuttle with NPS
- Resumed post-COVID service in June 2021 from the Pohono Park-and-Ride in Mill Valley
- Pickup location for this service will be moved to the Larkspur Ferry Terminal, tentatively starting June 4th
- North Bay residents & tourists will be able to take the SMART Train to Larkspur and visit Muir Woods
- SMART will be partnering with Marin Transit on marketing this new connection

Community Outreach

Cloverdale Citrus Fair - April 21-24 (500 Visitors)

- SMART Employees
 - Matt Stevens
 - Ashley Remy
 - Amanda Lee
 - Joanne Parker
 - TiLiAnne Tanner
 - Veda Florez
 - Yasamin Mora Serrano
 - Dawn Knight
 - Jonathan Limon-Lopez
 - Glenroy George

Petaluma Butter & Eggs Day - April 23rd (750 Visitors)

- SMART Employees
 - Matt Stevens
 - Lisa Hansley
 - Patty Jackson
 - Heather McKillop
 - Aaron Parkes
 - Veda Florez

Alto Street Canal Neighborhood Transportation Improvement Event (San Rafael) - April 23rd (125 Visitors)

- SMART Employee
 - Veda Florez

May Madness Car Show - May 7th (700 Visitors)

- Participated in Car Show, presented "Best Tires & Wheels" Trophy
- SMART Employees

- Veda Florez
- Patty Jackson
- Jonathan Limon-Lopez
- Glenroy George
- Jeffrey Limon-Lopez

Corte Madera Heritage Festival - May 7th (250 Visitors)

- SMART Employee
- Colleen Day-Flynn

Freight Update

SMART assumed freight operation on March 1, 2022

- Four locomotives inspected/evaluated
- Inspected all track equipment
- Conducted Hi-Rail inspection on Brazos Branch
- Delivered 200 tons of ballast to repair track on Brazos Branch
- Removed slow order at Brazos Junction Subdivision
- Inspected Brazos Branch bridges
- Clean up has begun at Schellville yard
- Cleaned up transload site at Victory Station
- 77 of 89 LPG tankers shipped out
- Continue discussions with four potential new customers

Challenges

- Recruitment and hiring
- Began recruitment January 31st for four Freight Utility Workers
- Position requires diverse experience: Took significant time to attract qualified applicants
- Currently have four qualified applicants in background

Solutions

- Extend freight operation contract one month
- Enable SMART additional time to hire, on-board, and train new employees
- Contract and budget amendment to be presented at June 1st meeting

Highlight of the Month

SMART in the News – Bay Area CBS News

Comments

Chair Rabbitt congratulated Mr. Gamlen on his 13 year anniversary at SMART. He has been a huge part of getting SMART build.

Director Fudge stated she looks forward in seeing the link on Facebook so that she can share. She asked if the Board members can receive the link of the news clip.

Director Bagby stated it was a great press release. This news clip underscores the connectivity from the train station to tourist destinations.

Lastly, Chair Rabbitt thanked all the employees who participated at all the Outreach events.

5. Public Comment on Non-Agenda Items

Rick Luttmann suggested to the Board members who are running for re-election to use this opportunity to speak regarding SMART service and accomplishments. This will help to get the voters to approve the extension tax.

Richard Brand supports Mr. Luttmann's comment. He has looked at some of the campaign literature and the importance of SMART can be emphasized. He stated that during this recent trip to Europe he was amazed with the number of freight train on the rails in Germany. The freight trains are transporting Liquid Natural Gas (LNG) in Germany. He said that it is important to know and understand that railroads are critical even under unexpected conditions.

Rick Coates thanked General Manager Cumins for the report. He said it is encouraging to see SMART staff participating at the events providing information regarding SMART. He said that on Saturday he and his grandkids will be riding their bicycle to the train station and go to Larkspur. He stated that children are the best ambassadors and can get more people to ride the train.

Mike Peckner he suggested that SMART conducts a survey to find out how many Giant fans are using the train on the weekends for day games. He also suggested that SMART staff make available a request for proposal for a competitive contract to build the extension to Windsor and three miles of track north of Healdsburg to facilitate the return of both freight and passenger service to receive revenue from both.

6. Consent

a. Accept Monthly Ridership Report – April 2022

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

MOTION: Director Lucan moved approval of the Consent Agenda as presented. Director Bagby second. The motion carried 10-0 (Directors Arnold and Rogers absent)

7. Authorize the General Manager to Award Contract No. HR-PS-22-002 to Alcohol & Drug Testing Services, LLC to provide Alcohol and Drug Testing Program Management Services in an amount of \$108,000 for the initial term of three years – *Presented by Ken Hendricks*

Procurement Manager, Ken Hendricks, stated that SMART contracts with a third-party consultant to provide alcohol and drug testing service to perform drug and alcohol testing services that are regulated by the Department of Transportation (DOT) and by the Federal Railroad Administration (FRA).

The existing third-party contract for these services expires on June 30, 2022. In anticipation of the contract expiration SMART issued a Request for Proposal (RFP) on March 2, 2022. SMART received 5 responsive proposals from the following firms:

- 1) Alcohol & Drug Testing Services, LLC
- 2) DATCO Services Corporation
- 3) DSI Medical Services
- 4) Midlands Testing Services, Inc.
- 5) Norton Medical Industries

SMART's evaluation committee reviewed the proposals using the evaluation criteria specified in the RFP. Following the evaluation of the proposals, the selection committee made the determination that Alcohol & Drug Testing Services, LLC provides the overall best benefit to SMART and is recommending the firm for the award of this contract.

Staff recommends authorizing the General Manager to award Contract No. HR-PS-22-002 to Alcohol & Drug Testing Services, LLC with a not-to-exceed amount of \$108,000 for the initial term of three years. This contract also has one two-year option to extend at SMART's discretion following the initial term.

MOTION: Director Garbarino moved to Authorize the General Manager to Award Contract No. HR-PS-22-002 to Alcohol & Drug Testing Services, LLC to provide Alcohol and Drug Testing Program Management Services in an amount of \$108,000 for the initial term of three years as presented. Vice Chair second. The motion carried 10-0 (Directors Arnold and Rogers absent).

8. Authorize the General Manager to Award a Purchase Order to CDW-G, LLC for the Purchase of Administration Network Hardware in the amount of \$226,467.21 – *Presented by Ken Hendricks*

Procurement Manager, Ken Hendricks stated that SMART's IT Department maintains and manages SMART's network infrastructure. This network includes equipment at SMART facilities that was implemented between 2012 and 2015. As part of maintaining a state of good repair and up-to-date security features, these devices must be replaced as the existing equipment has reached the end of its useful life.

The purchase of this equipment will maintain functionality and up-to-date security of the following systems at the Petaluma Office, Rail Operation Center, and Fulton facility.

This purchase leverages the National Association of State Procurement Officials (NASPO) for the purchase of the replacement equipment required. Government Code §6502 et seq. authorizes local governments, including Special Districts such as SMART, to utilize cooperative purchasing agreements to take advantage of greater economies of scale and efficiency since these contracts are competitively bid at a higher level by utilizing this cooperative contract, SMART is achieving between 35% - 45% off the manufacturer's price for this equipment.

Staff recommends authorizing the General Manager to award a Purchase Order to CDW-G, LLC for the purchase of Admin Network Hardware in the amount of \$226,467.21.

Comments

Director Fudge said that the Wi-Fi- equipment was probably installed, 7 years ago, since SMART has been operating for almost 5 years and it seems like a such a short timeline. Information System Manager, Bryan Crowley responded that while some of the equipment still is working, there are security updates that are into hardware and then there are software based security updates. As the equipment ages, eventually, the manufacturers stop providing those security updates or there are new vulnerabilities discovered and in the interest of keeping good security, we want to make sure that our equipment is up to date.

Chair Rabbitt asked if there is any value in the material/equipment that is being surplus. Mr. Crowley responded that's something we can investigate internally.

MOTION: Director Fudge moved to Authorize the General Manager to Award a Purchase Order to CDW-G, LLC for the Purchase of Administration Network Hardware in the amount of \$226,467.21 as presented. Director Bagby second. The motion carried 10-0 (Directors Arnold and Rogers absent).

9. Authorize the General Manager to Award Contract No. FR-PS-22-009 to South West Locomotive Repair to perform a basic overhaul and repair service on SMART's Railpower RP20DB Locomotive in an amount \$135,676.43 – *Presented by Ken Hendricks*

Procurement Manager, Ken Hendricks, stated SMART recently acquired four locomotives (3 owned and 1 leased) when it took over the freight operation from the Northwestern Pacific Railroad Company. The condition of these locomotives upon SMART taking over the freight operation showed that significant maintenance had been deferred on some of the units. One of the SMART-owned Railpower GenSet locomotives requires an urgent basic overhaul and repair service to be performed to meet Federal Railroad Administration (FRA) maintenance standards and to ensure the continued reliability of service to its customers.

Given the long lead time for parts and the urgency of the repairs needed, SMART has negotiated a contract with Lambertus J. Verstegen dba South West Locomotive Repair, a firm qualified and experienced in performing maintenance and repairs on Railpower GenSet locomotives. This firm is familiar with SMART's newly inherited Railpower GenSet locomotives as the firm had performed maintenance and repairs on these same units while they were owned by the Northwestern Pacific Railroad Company.

Given the urgency of the repairs needed, SMART has negotiated a contract with Lambertus J. Verstegen dba South West Locomotive Repair, a firm qualified and experienced in performing maintenance and repairs on Railpower GenSet locomotives. This firm is already familiar with SMART's newly acquired Railpower GenSet locomotives as the firm had performed maintenance and repairs on these same units while they were owned by the Northwestern Pacific Railroad Company.

Staff recommends authorizing the General Manager to award Contract No. FR-PS-22-009 to Lambertus J. Verstegen dba South West Locomotive Repair to perform this urgent basic overhaul and repair service on SMART's Railpower RP20DB Locomotive with a not-to-exceed amount of \$135,676.43.

MOTION: Director Garbarino moved to Authorize the General Manager to Award Contract No. FR-PS-22-009 to South West Locomotive Repair to perform a basic overhaul and repair service on SMART's Railpower RP20DB Locomotive in an amount \$135,676.43 as presented. Vice Chair Pahre second. The motion carried 10-0 (Directors Arnold and Rogers absent).

10. Approve a Resolution Authorizing the General Manager to Execute Contract No. CV-BB-22-001 to Air & Lube Systems, for Construction of a Maintenance Building & Train Wheel Press Installation for an amount of \$282,273 – *Presented by Bill Gamlen*

Chief Engineer, Bill Gamlen, stated that SMART is purchasing a wheel press machine that will allow the the Vehicle Maintenance Department to remove and install train wheels from the truck axle. SMART has contracted with outside entities to remove and install wheels. The new wheel press is scheduled to be delivered later this Summer.

This contract completes the work of reconfiguring the SMART Rail Operations Center to make room for the wheel press as well as installing key infrastructure and assisting with the wheel press installation. The work is divided into four parts:

1. Relocate storage containers to make room for the facility reconfiguration.
2. Convert an existing canopy structure into an enclosed secure room that will become the vehicle maintenance parts storage.
3. Install electrical power equipment and cabling for the wheel press.
4. Assist in the installation of the wheel press machine by installing anchor bolts, providing crane lifting services, connecting power, and other related support activities.

SMART conducted a competitive procurement was advertised on March 21, 2002. SMART received one bid from the Air & Lube Systems, Inc., who was determined to be responsible and responsive.

Staff recommends approving Resolution No. 2022-19 authorizing the General Manager to execute Contract No. CV-PS-22-001 with Air & Lube Systems for Construction of a Maintenance Building & Train Wheel Press Installation Inc. for an amount of \$282,273 and a term through August 31, 2022.

Comments

Chair Rabbitt asked if the price is appropriate since SMART only received one bid. Mr. Gamlen responded yes.

Vice Chair Pahre thanked General Manager Cumins for responding to her questions regarding this item since she recalls the Board approving the purchase of the wheel truing machine and they are two separate equipment.

MOTION: Director Colin moved to Approve a Resolution Authorizing the General Manager to Execute Contract No. CV-BB-22-001 to Air & Lube Systems, for Construction of a Maintenance Building & Train Wheel Press Installation for an amount of \$282,273 as presented. Director Garbarino second. The motion carried 10-0 (Directors Arnold and Rogers absent).

11. Fiscal Year 2022/23 Draft Budget (Information and Discussion) – *Presented by Heather McKillop*

Chief Financial Officer, Heather McKillop, introduced Budget and Finance Manager, Claire Springer; she will be providing presentations to the Board in the future.

Ms. McKillop stated that the draft fiscal year 2023 budget is posted on the website and available for public comment through Friday, June 3rd. The Board will be notified of all the comments and whether they have been incorporated into the final document. She provided a presentation which will be posted on the website. Highlights include:

FY 2023 Budget Components

- SMART Overview
- Budget Overview
- Revenues
- Expenditures
- Freight
- Carryforward
- Reserves
- Next Steps

SMART Overview

- Board adopted Vision, Mission, Objectives, and Values
- Held 4 Listening Sessions
- Will assist in developing goals, strategies, and measurements
- Will direct future budgets

Budget Overview

- Funding
- Expenditures
- Operating Budgets

Budget Overview - Freight

- Revenues
- Expenditures

Revenues (details on page B-15 of the draft budget)

- Sales Tax
- State Grants
- Federal Funds
- Fare Revenues
- Parking
- Federal Funds
- Fare Revenues
- Parking

Expenditures

- Operations
- Administration
- Debt Service (*not included in pie chart*):
- Engineering/ Capital Programs

FY 2023 Non-Capital Expenditures

- Planning Projects
- Environmental Projects

FY 2023 Capital Expenditures

- Pathways
- Expansion to Windsor
- State of Good Repair (SOG)
- Match for grants that are being pursued

Freight Revenue

- State Grants
- Freight Fees
- Leases

Freight – Expenditure

- Salaries
- Services and Supplies
- Capital and State of Good Repair

Carryforward Funds

- Projects or programs not completed or spent in FY 22
- Working on projected carryforward
- Will change once year end information is known
- Will be updated in FY 23 amended budget after the financial audit is completed and actual numbers are known

Reserves and Estimated Fund Balance

- Pension Liability Reserve
- Equipment Reserve
- Corridor Completion Reserve
- Operating Reserve

Next Steps

- Draft Budget out for public review and comment - Comments due Friday, June 3rd
- Final Budget presented on June 15th Board meeting
- Fiscal Year 2023 will be effective July 1, 2022

Comments

Director Lucan asked who provides the sales tax forecast and if it's done by jurisdiction. Ms. McKillop responded that the forecast is done by Muni Services. She receives the information by District for Sonoma and Marin County. Director Lucan asked if there is any benefit in paying down the bonds Ms. McKillop responded that she has been conducting research to possibly have a 3rd party for investments. Currently, SMART has its investments at Sonoma County Treasury and Bank of Marin whom both are very conservative. The Bonds have a low interest rate and currently does not make sense to change since interest rate are high and increasing.

Director Bagby thanked Ms. McKillop for the presentation. She said that it could be time to consider additional investment for planning for pathway, passenger service and freight service north of Healdsburg. She asked if there is a timeline or can we now begin to consider planning the extensions north of Windsor. Ms. McKillop responded that when the Short-Range Transit Plan is updated in the next couple of months that is when staff present to the Board what we want to do/complete through 2032. General Manager Cumins stated that tough conversations will occur to know how we navigate through 2032. Director Bagby thanked General Manager Cumins for the clarification.

Chair Rabbitt thanked Ms. McKillop for a clear and detailed presentation of the budget.

Director Connolly asked for clarification of the Low Carbon Transit Operations Program on page 105. Ms. McKillop responded that SMART qualifies for this program and the funds have been allocated to provide and expand service.

Chair Rabbitt said that he hopes that SMART can get fund from the infrastructure bill.

Richard Brand thanked Ms. McKillop for a very clear and detailed presentation especially for those who are not very familiar with finance. He said there is a broken bridge north of Windsor, perhaps SMART can recover some funds before the statute of limitations runs out.

Mike Pechner asked if there are funds allocated for the spurs. Ms. McKillop responded that the funds are allocated to the Black Point Bridge budget and the remaining funds will be brought back to the Board to allocations approval.

Chair Rabbitt adjourned the Board to Closed Session at 2:54pm on the following:

12. Closed Session

- a. Conference with Labor Negotiator Eddy Cumins, General Manager pursuant to Government Code Section 54957.6
Agency Designated Representative: General Manager
Represented Employees: Operating Engineers Local 3, IAMAW Local Lodge No. 1414, and Teamsters Local 665; and Unrepresented Employees
- b. Conference with Legal Counsel regarding existing litigation pursuant to California Government Code Section 54956.9(a); Filemon Hernandez, et al. V. Sonoma-Marin Area Rail Transit District (SMART) – United States District Court for the Northern District of California – CIV No. 4:21-CV-01782

13. Report out of Closed Session

District Counsel reported out of Closed Session at 4:03pm on the following:

- a. Conference with Labor Negotiator Eddy Cumins, General Manager pursuant to Government Code Section 54957.6
Agency Designated Representative: General Manager
Represented Employees: Operating Engineers Local 3, IAMAW Local Lodge No. 1414, and Teamsters Local 665; and Unrepresented Employees
Report Out: Direction was given to staff, nothing to report.

- b. Conference with Legal Counsel regarding existing litigation pursuant to California Government Code Section 54956.9(a); Filemon Hernandez, et al. V. Sonoma-Marín Area Rail Transit District (SMART) – United States District Court for the Northern District of California – CIV No. 4:21-CV-01782

Report Out: Direction was given to staff, nothing to report.

- 14. Next Regular Meeting of the Board of Directors, May 18, 2022 – 1:30 PM
- 15. Adjournment - Meeting adjourned at 4:05pm.

Respectfully submitted,

Leticia Rosas-Mendoza
Clerk of the Board

Approved on: _____



June 1, 2022

David Rabbitt, Chair
Sonoma County Board of Supervisors

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

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Damon Connolly
Marin County Board of Supervisors

Chris Coursey
Sonoma County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Eddy Cumins
General Manager

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Petaluma, CA 94954
Phone: 707-794-3330
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www.sonomamarintrain.org

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

SUBJECT: Monthly Financial Status

Dear Board Members:

RECOMMENDATION: Approve Monthly Financial Reports

SUMMARY:

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

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

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

Very truly yours,

/s/

Heather McKillop
Chief Financial Officer

Attachment(s):

- 1) Monthly Financial Status Report
- 2) Contract Summary Report



MONTHLY FINANCIAL STATUS

APRIL 2022

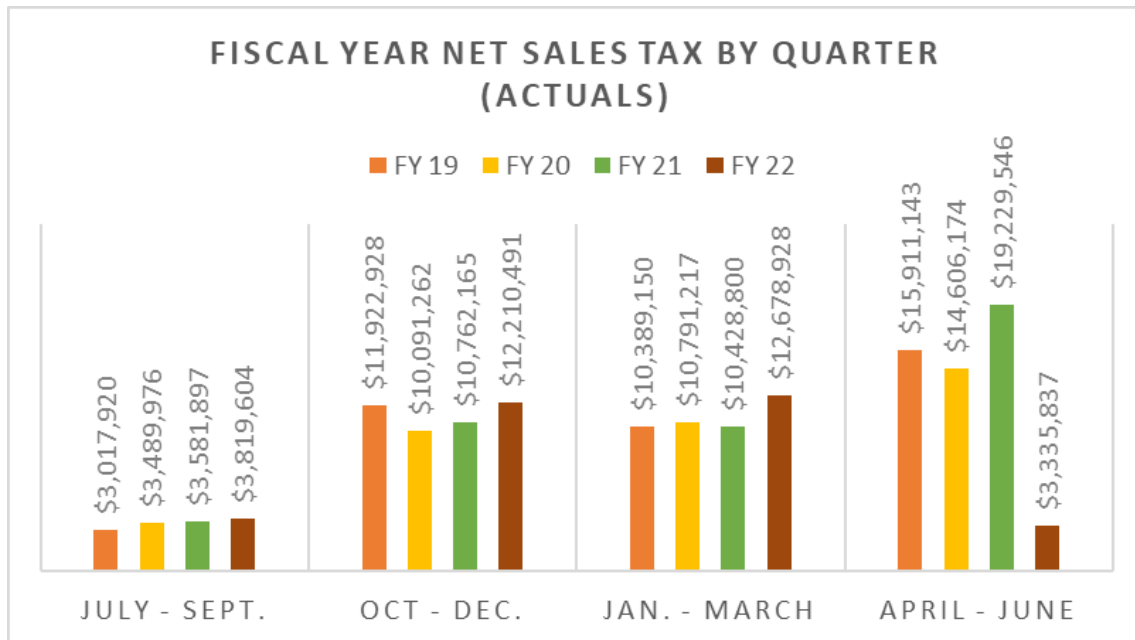
REVENUES

	FY 2021-22 Approved Budget	Actual	Amount Over/ Under Budget	Comments
Revenues				
Transit/Pathway				
Sales/Use Taxes	\$ 46,981,000	\$ 32,044,860	\$ (14,936,140)	Sales Taxes are recorded when received not when earned
Interest and Lease Earnings	\$ 623,865	\$ 710,333	\$ 86,468	Leases renew throughout the year
Miscellaneous Revenues	\$ 30,000	\$ 47,392	\$ 17,392	
Fare Revenue	\$ 1,200,000	\$ 982,566	\$ (217,434)	
Parking Revenue	\$ 27,000	\$ 11,789	\$ (15,211)	
State Grants	\$ 8,660,684	\$ 4,140,420	\$ (4,520,264)	State grants are received throughout the year
Charges For Services	\$ 57,500	\$ 242,363	\$ 184,863	Includes dispatching and flagging services which are performed throughout the year
Federal Funds (Non-COVID Relief)	\$ 3,037,733	\$ 427,048	\$ (2,610,685)	Federal funds are received on a reimbursable basis. Funds have to be expended before they can be requested.
Federal Funds (COVID Relief)	\$ 7,225,294	\$ 4,724,821	\$ (2,500,473)	American Rescue Plan (ARP) Funds
Other Governments/ Misc.	\$ 161,998	\$ 166,659	\$ 4,661	
Transit/Pathway Subtotal	\$ 68,005,074	\$ 43,498,251	\$ (24,506,823)	
Freight				
Interest and Lease Earnings	\$ -	\$ 138,502	\$ 138,502	Lease income from freight right-of-way
Freight Movement Revenues	\$ 372,000	\$ 114,803	\$ (257,197)	
Storage Fees	\$ 115,400	\$ 88,510	\$ (26,890)	
State Grants	\$ 5,803,473	\$ 4,045,307	\$ (1,758,166)	Includes \$4m for freight rights grant
Freight Subtotal	\$ 6,290,873	\$ 4,387,122	\$ (1,903,751)	
Total Revenues	\$ 74,295,947	\$ 47,885,373	\$ (26,410,574)	

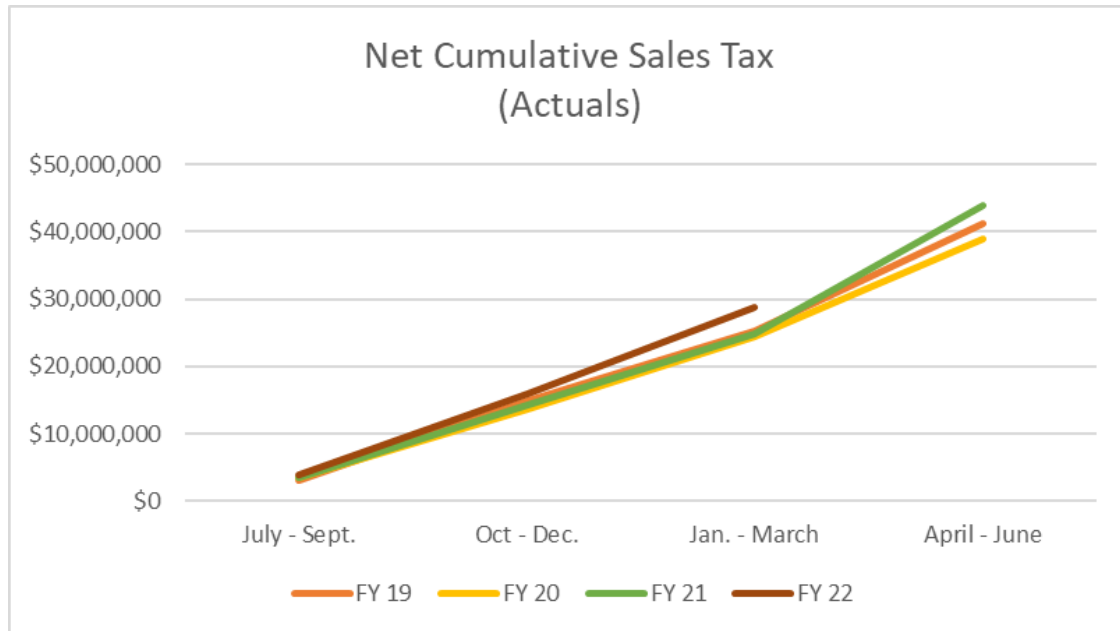
**Measure Q Sales Tax
Fiscal Year (FY) 2021/2022**

Time Period	July - Sept.	Oct - Dec.	Jan. - March	April - June
Forecasted FY 22 Budget	\$ 3,506,166	\$ 10,518,498	\$ 13,518,498	\$ 19,434,838
Actual	\$ 3,819,604	\$ 12,210,491	\$ 12,678,928	\$ 3,335,837
Difference	\$ 313,438	\$ 1,691,993	\$ (839,570)	\$ (16,099,001)

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

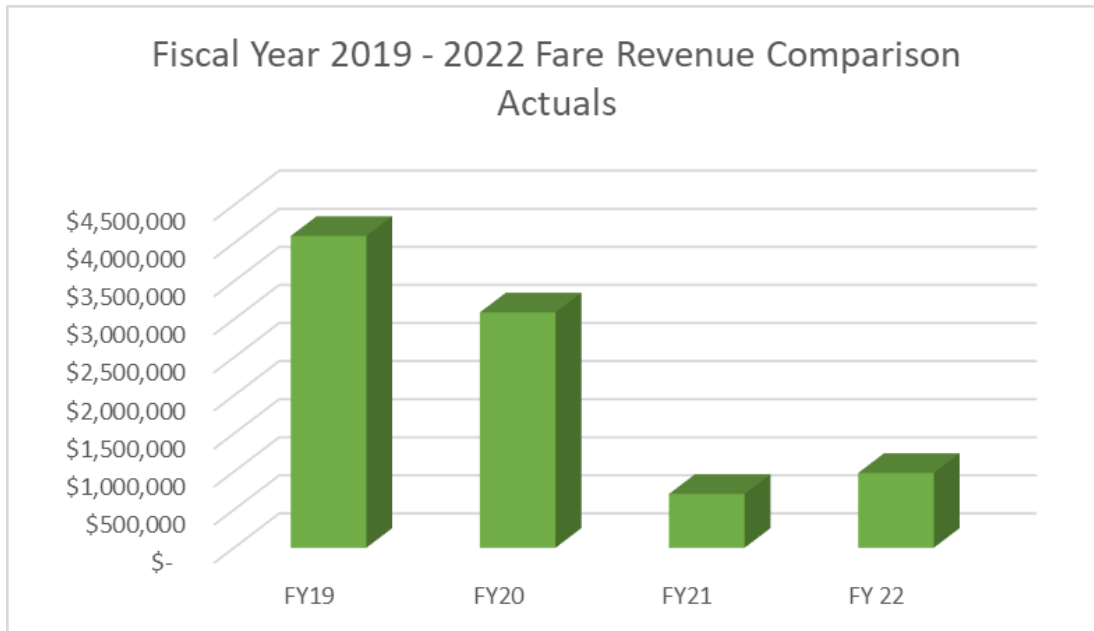


Fiscal Year 2019-2022 Net Cumulative Sales Tax Comparison

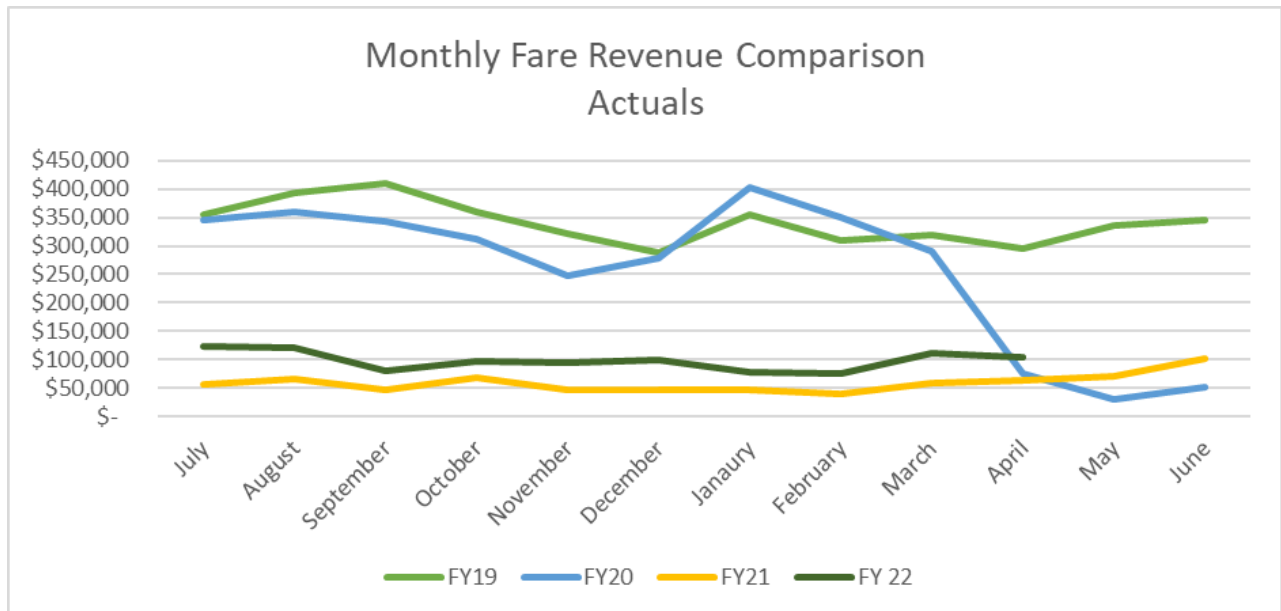


Note: Sales Taxes are recorded when received not when earned.

Fiscal Year 2019-2022 Fare Revenue Comparison



Fiscal Year 2019-2022 Monthly Fare Revenue Comparison



EXPENDITURES

Administration*	Operations	Capital	Freight
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*Gauge doesn't include principal debt service payment should show 51% spent

0% - 50% 50% - 75%
75% - 100%



0% - 50% 50% - 75%
75% - 100%



0% - 50% 50% - 75%
75% - 100%



0% - 50% 50% - 75%
75% - 100%



	FY 2021-22 Approved Budget	Actual	Amount Over/ Under Budget
Expenditures			
Administration			
Salaries & Benefits	\$ 5,924,313	\$ 3,904,870	\$ (2,019,443)
Services & Supplies	\$ 10,245,603	\$ 4,411,377	\$ (5,834,226)
Debt Service	\$ 14,944,169	\$ 14,391,916	\$ (552,253)
Machinery & Equipment	\$ 390,600	\$ 56,981	\$ (333,619)
Administration Subtotal	\$ 31,504,685	\$ 22,765,144	\$ (8,739,541)
Operations			
Salaries & Benefits	\$ 16,287,214	\$ 11,157,654	\$ (5,129,560)
Services & Supplies	\$ 6,929,110	\$ 3,323,646	\$ (3,605,464)
Buildings & Capital Improvements	\$ 2,566,940	\$ 826,334	\$ (1,740,606)
Operations Subtotal	\$ 25,783,264	\$ 15,307,634	\$ (10,475,630)
Capital			
Salaries & Benefits	\$ 1,482,430	\$ 1,095,292	\$ (387,138)
Services & Supplies	\$ 815,185	\$ 308,942	\$ (506,243)
Other Charges	\$ 30,000	\$ 26,953	\$ (3,047)
Machinery & Equipment	\$ 1,555,000	\$ 1,168,132	\$ (386,868)
Infrastructure	\$ 6,407,407	\$ 518,418	\$ (5,888,989)
Capital Subtotal	\$ 10,290,022	\$ 3,117,737	\$ (7,172,285)
Freight	\$ 6,290,873	\$ 4,214,336	\$ (2,076,537)
Total All Expenditures	\$ 73,868,844	\$ 45,404,851	\$ (28,463,993)

CAPITAL PROJECTS

Capital Project Report						
		Total Project Budget	Expended in Prior Fiscal Years	Budgeted in FY 22 (Includes Amended Budget)	Remaining to be Budgeted in Future Years	Project Status
Additional Railcar Purchase		\$ 11,000,000	\$ 9,900,000	\$ 1,100,000	\$ -	All milestone payments complete
Windsor Extension		\$ 65,000,000	\$ 24,408,475	\$ -	\$ 40,591,525	Funds on hold, pending MTC lawsuit on RM3 funding. Awaiting Supreme Court decision
Sonoma County Pathway Connector Project - Design & Construction		\$ 15,781,499	\$ 1,560,454	\$ 1,613,827	\$ 12,607,218	In design & permitting
- Southpoint to Main (2.9 miles)						
- Golf Course to Bellevue (2.8 miles)						
Marin & Sonoma Pathway Design & Permitting		\$ 10,752,215	\$ -	\$ 3,641,412	\$ 7,110,803	The design consultant work has been divided into two Request for Proposals (RFPs). The Phase I was awarded in February and Phase II was awarded in March, consultants have begun work.
RFP Phase I Locations:						
- McInnis Parkway at Bridgewater Drive to Smith Ranch Road (0.74 miles)		\$ 490,078	\$ -	\$ 118,533	\$ 371,545	
- Main Street to East Railroad Ave. (1.48 miles)						
- Joe Rodota Trail to 3rd Street (0.06 miles)						
- Santa Rosa Downtown Station to 6th Street (0.04 miles)						
- Guerneville Road to West Steele Lane (0.32 miles)						
- West Steel Lane to San Miguel Road (1.2 miles)						
- San Miguel Blvd. to Airport Blvd. (3.1 miles)						
Payran to Lakeville Pathway - Design & Construction		\$ 1,085,806	\$ -	\$ -	\$ 1,085,806	Pending grant execution & securing environmental permits
Black Point Bridge - Fender & Structural Repair		\$ 725,000	\$ 49,865	\$ 100,484	\$ 574,651	Freight Project - Awaiting environmental construction permits
Basalt Creek Timber Bridge Replacement		\$ 568,257	\$ -	\$ 136,104	\$ 432,153	In design
San Antonio Tributary Timber Trestle Replacement		\$ 1,129,110	\$ 1,583	\$ 179,340	\$ 948,187	In design
McDowell Blvd. Crossing Reconstruction - Design & FY21 Const.		\$ 1,150,000	\$ -	\$ 150,000	\$ 1,000,000	In design

INVESTMENTS

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

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

<u>Cash On Hand</u>	
Bank of Marin	\$ 25,892,104
Sonoma County Investment Pool *	\$ 67,174,267
Total Cash on Hand	\$ 93,066,371
<u>Reserves</u>	
Self-Insured	\$ 2,370,675
OPEB/ CalPERS	\$ 3,574,676
Operating Reserve	\$ 10,000,000
Capital Sinking Fund	\$ 7,625,000
Corridor Completion	\$ 7,000,000
Total Reserves	\$ 30,570,351
Cash Balance	\$ 62,496,020
Less: Current Encumbrances	\$ 5,906,301
Balance	\$ 56,589,719
Less: Estimated FY22 Year-end	
Fund Balance	\$ 37,393,310
Remaining Balance	\$ 19,196,409
* Does not include funds held by the trustee for debt service	



Contract Summary

Active Contracts as of May 1, 2022

PASSENGER RAIL

Contractor	Scope	Fiscal Year 21/22 Projected	Fiscal Year 21/22 Actuals-To-Date
A.J. Janitorial Service	Janitorial Services for all Stations, Roblar, ROC, and Fulton	\$104,000.00	\$75,060.00
Ai-Media, Inc.	As Needed Live Captioning Services for Public Meetings	\$15,000.00	\$2,160.00
Air Technology West	Maintenance and On-Call Repair for Air Compressors	\$4,800.00	\$3,154.00
Alcohol & Drug Testing Services, LLC	DOT Drug and Alcohol Testing	\$36,000.00	\$19,103.00
All Purpose Safety Training Solutions	"Train the Trainer" Training Services	\$6,585.00	\$6,585.00
Allen, Glaessner, Hazelwood LLP	Legal Services for Litigation and Rail Transit Issues	\$91,782.00	\$21,771.00
Alliant Insurance Services	Insurance Brokerage and Risk Management Services	\$70,000.00	\$0.00
American Integrated Services, INC.	On-Call Biohazard Remediation Services	\$50,000.00	\$0.00
American Rail Engineers Corporation	Railroad Bridge Engineering, Inspection, & Design	\$89,640.00	\$35,767.00
Asbury Environmental Services (AES)	Recycling & Disposal Service for Used Oil, Fuel Filters, Rags, and Related Equipment	\$18,600.00	\$8,357.00
Atlas Copco Compressors, LLC	Air Compressor Maintenance Services	\$3,000.00	\$0.00
Barbier Security Group	Security Patrol Services along Right-of-Way	\$67,000.00	\$0.00
Barnes & Company, LLC	Consulting Services for SMART Toy Drive Events	\$15,000.00	\$15,000.00
Bay Area Traffic Solutions	Flagging Support for MOW	\$13,000.00	\$8,950.00
BBM Railway Equipment, LLC	Wheel Press Machine - Furnish, Install, Configure, Test, Commission, and Train SMART Staff	\$748,390.00	\$198,306.00
Becoming Independent	Emergency Bus Bridge Services	\$37,000.00	\$10,900.00
Bettin Investigations	Public Safety and Emergency Training Consultation Services	\$5,000.00	\$188.00
BKF Engineers Inc.	Design and Engineering Services for MUP Segments in Sonoma and Marin Counties	\$1,312,359.00	\$0.00
Bright Star Security, Inc.	Security Patrol Services at SMART's Cal Park Tunnel	\$5,220.00	\$5,220.00
Bright Star Security, Inc.	Security Patrol at SMART's Cal Park Tunnel	\$5,490.00	\$2,745.00
Burke, Williams & Sorensen, LLP	Litigation Support Services	\$100,000.00	\$0.00
Business Training Library, LLC	Cloud-Based Learning Courses	\$14,000.00	\$12,799.00
Cinquini & Passarino, Inc.	Right-of-Way Land Surveying and Related Services	\$22,728.00	\$9,276.00
Civic Edge Consulting	Social Media Outreach Strategy Consulting	\$138,788.00	\$105,333.00
DeAngelo Contracting Services, LLC	Assignment of OP-SV-21-006 Vegetation Control Services	\$35,000.00	\$29,750.00
Dikita Enterprises, Inc	NTD Compliant Passenger Counting Services	\$43,537.00	\$8,333.00
Doug Williams	Fire and Life Safety Consultant	\$5,000.00	\$990.00
Dr. Lance O'Connor	Occupational Health Screening Services	\$3,000.00	\$420.00
Dr. Mark Clementi	Pre-Employment Psychological Evaluations	\$25,000.00	\$18,825.00
Eide Bailly LLP	Financial Audit Services	\$15,045.00	\$0.00
eLock Technologies, LLC	Station Bike Lockers and Maintenance Services	\$13,130.00	\$9,275.00
Empire Cleaners	Operations Uniform Dry Cleaning, Laundering, and Related Services	\$50,000.00	\$7,949.00
Environmental Logistics, INC.	On-Call Biohazard Remediation Services	\$150,000.00	\$0.00
Gary D. Nelson Associates, Inc.	Temporary Staffing and Placement Services	\$50,000.00	\$21,487.00
George Hills Company, Inc.	Third Party Claims Administration Services	\$45,000.00	\$2,410.00
GHD, Inc.	SWPP Compliance, AutoCAD Management, Traffic and Hydraulic Analysis	\$120,000.00	\$2,644.00
GHD, Inc.	3 Segments MUP Petaluma - Penngrove - Rohnert Park	\$428,323.00	\$344,272.00
Golden Five, LLC	Microsoft 365 Consulting Services	\$31,600.00	\$11,250.00
GP Crane & Hoist Services	Cal/OSHA Inspection Services	\$5,000.00	\$3,520.00
Granicus, Inc.	Media Streaming and Internet Broadcasting Services	\$11,665.00	\$11,665.00
Hanford A.R.C.	Implementation and Monitoring Las Gallinas Creek Riparian Enhancement Plan	\$33,830.00	\$21,999.00
Hanford A.R.C.	Implementation and Monitoring, San Rafael Creek Riparian Enhancement Project	\$175,000.00	\$76,731.00
Hanford A.R.C.	Maintenance and Monitoring the the Las Gallinas Creek Watershed Riparian Enhancement Plantir	\$4,416.00	\$0.00
Hanson Bridgett LLP	Legal Services	\$150,000.00	\$27,528.00
HCI Systems, Inc.	Fire Equipment Inspection and Certification	\$14,500.00	\$0.00
Heavy Equipment Transportation, Inc.	Transportation of Heavy Equipment	\$7,330.00	\$0.00

Contractor	Scope	Fiscal Year 21/22 Projected	Fiscal Year 21/22 Actuals-To-Date
Holland Company	Track Geometry and Measurement Services	\$24,000.00	\$24,000.00
Hunt and Sons, Inc.	Bulk Delivery of Motor Oil (15W40)	\$12,000.00	\$3,564.00
Innovative Business Solutions	Payroll processing services	\$35,400.00	\$21,069.00
Integrative Security Controls, Inc.	CCTV Maintenance and Support	\$30,000.00	\$3,539.00
Intelligent Technology Solutions, LLC	Maximo SaaS Development, Implementation, and Related Services	\$260,143.00	\$141,771.00
JMA Civil, Inc.	On-Call Civil & Rail Engineering Design Services	\$144,663.00	\$100,234.00
Joanne Roessler	On-Call Graphic Design Services	\$10,000.00	\$0.00
Judy D. James	Public Affairs and Dispute Resolution Consultation Services	\$4,500.00	\$2,213.00
Kimberly Dow	On-Call Graphic Design Services	\$8,000.00	\$627.00
KL2 Connects	GM Recruitment Services	\$37,200.00	\$33,750.00
Kristie Doughty-Oxford	Design, Implementation, and Troubleshooting for New Access Contract Database	\$5,000.00	\$0.00
LC Disability Consulting	Disability Access Consulting	\$20,000.00	\$2,300.00
Leete Generators	Generator Inspection and Maintenance Services	\$3,000.00	\$0.00
Leete Generators	Generator Maintenance	\$2,609.00	\$2,609.00
Masabi LLC	SMART Mobile Ticketing Pilot Project	\$57,600.00	\$38,000.00
MaxAccel	Compliance Management Software Design/Implementation/Asset Management	\$20,000.00	\$16,146.00
Maze & Associates	Financial Audit Services	\$43,646.00	\$31,333.00
MGrodner, LLC	Project Management Services	\$25,000.00	\$0.00
Mike Brown Electric Co.	Remove and Replace In-Pavement Vehicle Detection Loop	\$15,000.00	\$15,000.00
Mike Brown Electric Co.	On-Call Electrical Maintenance	\$25,000.00	\$0.00
Militus, Inc.	Cybersecurity Assessment Services	\$40,000.00	\$40,000.00
Milton R. Davis dba Davis Sign Co, Inc.	Printing, Installation, and Removal of Holiday Express Window Clings on SMART's DMU for Toy Dr	\$1,167.00	\$1,167.00
Mission Linen Supply	Employee Uniform Services	\$36,000.00	\$20,736.00
Modern Railway Systems, Inc.	Monitoring and Maintenance SMART's Communications Network and TDX System	\$155,132.00	\$112,426.00
MuniServices, LLC	Sales Tax Recovery Services	\$45,710.00	\$20,131.00
Murphy, Campbell, Alliston & Quinn	Legal Services for Rail Transit Matters	\$100,000.00	\$11,880.00
Netspeed Solutions, Inc.	SMART Phone System Maintenance	\$19,000.00	\$11,867.00
Netwoven Inc.	SharePoint Maintenance, Support, Implementation, and Related Services	\$29,350.00	\$27,702.00
Nextdoor Inc.	Use of Nextdoor Platform for Community Notifications	\$19,447.00	\$11,344.00
North Bay Petroleum	Provision of Fuel for DMUs	\$1,100,000.00	\$556,913.00
North Bay SAP Services	Substance Abuse Professional Services	\$2,600.00	\$0.00
Nossaman LLP	Litigation, Rail Transit Issues, and other related legal services	\$246,481.00	\$202,471.00
Occupational Health Centers of CA	Pre-Employment Evaluation Services	\$20,000.00	\$9,706.00
Oil Stop, LLC	Automotive Repair and Service	\$3,000.00	\$79.00
Oracle	Fusion ERP System	\$60,000.00	\$25,049.00
Pamco Machine Works, Inc.	Railroad Wheel Pressing Services	\$115,770.00	\$115,770.00
Parodi Investigative Solutions	Pre-Employment Background Investigation Services	\$20,000.00	\$10,650.00
Peterson Mechanical, Inc.	HVAC Maintenance Services	\$22,000.00	\$0.00
PFM Financial Advisors, LLC	As-Needed Financial Consultant Services	\$10,000.00	\$0.00
PFM Financial Advisors, LLC	Financial Advisory Services	\$30,000.00	\$0.00
Pivotal Vision, LLC	Security Software Licensing	\$2,200.00	\$2,200.00
Portola Systems, Inc.	SMART Station Network Maintenance and Configuration Services	\$250,000.00	\$199,572.00
Precision Wireless	Tech Support and Maintenance for Land Mobile Radio	\$38,000.00	\$15,190.00
Precision Wireless	Tech Support and Maintenance for Land Mobile Radio	\$4,952.00	\$4,952.00
Public Financial Mangement, Inc.	Arbitrage Rebate Compliance Services	\$2,000.00	\$2,000.00
RailWorks Track Services, Inc.	Track Maintenance Services	\$143,323.00	\$143,323.00
San Rafael Chamber of Commerce	Marin County Communications Consulting	\$75,000.00	\$50,000.00

Contractor	Scope	Fiscal Year 21/22 Projected	Fiscal Year 21/22 Actuals-To-Date
Santa Rosa Fire Equipment Service, Inc.	SMART Fire Equipment Maintenance	\$10,000.00	\$0.00
SEFAC USA	Portable Lifting Jack Inspection and Certification Services	\$8,000.00	\$0.00
Sherwood Electromotion, Inc.	Overhaul Services for SMART's Permanent Magnet Alternators	\$40,000.00	\$0.00
Sierra-Cedar, LLC	Oracle Enterprise Resources Planning Software	\$75,000.00	\$8,445.00
Sonoma County Fleet Operation Division	Non-Revenue Fleet Maintenance Services	\$23,000.00	\$6,235.00
Sperry Rail Service	Rail Flaw Detection Services	\$13,500.00	\$0.00
SPTJ Consulting	Network Infrastructure, Security, Migration and Setup Services	\$329,400.00	\$102,398.00
Stantec Consulting Services, Inc.	Environmental Permit Management and Construction Compliance Monitoring	\$20,000.00	\$7,581.00
Stericycle, Inc.	Medical Waste Pick-Up and Disposal Services	\$2,000.00	\$0.00
Sue Evans	Title Investigation Support Services	\$20,000.00	\$14,008.00
Sumitomo Corporation	Manufacture & Delivery of Rail Vehicles	\$1,100,000.00	\$1,100,000.00
Summit Signal, Inc.	Emergency Call-Out Services for Track and Signals	\$56,905.00	\$46,905.00
Survival CPR & First Aid, LLC	First Aid and CPR Training, AED Compliance Program	\$7,500.00	\$7,096.00
Swiftly, Inc.	AVL Mobile Application and Website Interface	\$8,400.00	\$8,400.00
Traliant, LLC	Online Training Program	\$2,595.00	\$2,595.00
Transportation Analytics	Transit Financial Modeling, Benchmarking, Performance Metrics, Benefit-Cost Analysis, and Strategic	\$11,100.00	\$0.00
Trillium Solutions, Inc.	Transit Feed Mapping Software	\$2,300.00	\$2,300.00
United Mechanical Incorporated	HVAC Service, Maintenance and Related Services	\$2,000.00	\$1,622.00
UTCRA, LLC	Wheel Pressing Services	\$50,000.00	\$0.00
Van Scoyoc Associates	Federal Lobbying Services	\$30,000.00	\$10,000.00
Van Scoyoc Associates	Federal Lobbying Services	\$30,000.00	\$30,000.00
VenTek Transit Inc.	Clipper Card Vending Machine Contract Assigned to SMART	\$77,138.00	\$0.00
VenTek Transit Inc.	Fare Vending Machine Operations and Maintenance Services	\$262,176.00	\$121,551.00
Vista Broadband Networks, Inc.	Broadband Services	\$9,000.00	\$0.00
W.J.C. Electric, Inc. dba Hahn Automotive	Non-Revenue Vehicle Repair and Service	\$20,000.00	\$8,009.00
West Coast Arborists, Inc.	Tree Trimming and Tree Removal Services	\$30,000.00	\$23,500.00
WRA Environmental Consultants	Environmental Permitting, Management, & Support Services	\$191,510.00	\$69,650.00
Zoon Engineering	Right-of-Way Feasibility Study - San Rafael	\$30,000.00	\$26,553.00
	TOTALS:	\$10,225,175.00	\$4,767,853.00

FREIGHT

American Rail Engineers Corporation	Railroad Bridge Engineering, Inspection, & Design - Black Point Bridge	\$30,000.00	\$2,905.00
Freight Rail Tracking Software Vendor	Freight Rail Tracking Software	\$10,000.00	\$0.00
GATX Rail Locomotive Group, LLC	Freight Locomotive Lease Agreement	\$12,000.00	\$5,984.00
Hogan Lovells LLP	Legal Services - Freight and Passenger Rail Sector	\$25,000.00	\$3,040.00
Holland Company	Track Geometry and Measurement Services	\$4,125.00	\$4,125.00
Hue & Cry, Inc.	Security System at Schellville Depot	\$750.00	\$126.00
Northwestern Pacific Railroad Company	Invoicing, Revenue Receiving, and Training for Freight	\$7,800.00	\$0.00
Project Finance Advisory Limited	Freight Service Option Analysis	\$4,718.00	\$4,718.00
Summit Signal, Inc.	Interim Freight Rail Operation and Maintenance Services	\$395,635.00	\$22,404.00
Wine Country Sanitary, Inc.	Portable Toilet Rental and Maintenance	\$782.00	\$0.00
WRA Environmental Consultants	Environmental Permitting, Management, & Support Services - Black Point Bridge	\$9,472.00	\$8,001.00
	TOTALS:	\$500,282.00	\$51,303.00

Actuals-To-Date includes invoices that have been approved as of April 30, 2022, but may not have been processed in SMART's Financial System.

Resolution No. 2022-01.06 (JUN)
Sonoma-Marín Area Rail Transit District
June 1, 2022

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

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

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

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

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

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

NOW, THEREFORE, BE IT RESOLVED THAT:

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

Resolution No. 2022-01.06 (JUN)
Sonoma-Marín Area Rail Transit District
June 1, 2022

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 1st day of June 2022, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ATTEST:

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



June 1, 2022

David Rabbitt, Chair
Sonoma County Board of Supervisors

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

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Damon Connolly
Marin County Board of Supervisors

Chris Coursey
Sonoma County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Eddy Cumins
General Manager

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

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

SUBJECT: Approval of Nossaman LLP Legal Service Contract Amendment No. 2

Dear Board Members:

RECOMMENDATION: Authorize the General Manager to execute a Second Amendment to the Nossaman legal services agreement, increase the contract amount by \$250,000 and extend the term for two (2) years.

SUMMARY:

Nossaman LLP has assisted SMART with specialized legal services on several occasions since 2010 and has supported SMART in a number of projects and litigation support over the last several years including: (1) negotiations of the operating agreements; (2) public contracting issues related to the construction of the Initial Operating Segment, (3) Federal Regulatory matters and litigation.

Nossaman LLP has specialized legal expertise in a number of areas, including real estate, right-of-way matters, transportation and Federal, State and local governmental agency matters. The District anticipates the continued need for Nossaman's expertise and specialized services and for supplemental litigation and legal support on an as-needed basis.

Staff is recommending increasing the Nossaman LLP contract by \$250,000. In addition, the proposed Amendment extends the contract for an additional 24-month term through June 30, 2024.

FISCAL IMPACT: Funding is included in the Fiscal Year 2022-23 budget and assumed in subsequent years.

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

Very truly yours,

/s/

Thomas F. Lyons
General Counsel

Attachment(s): Nossaman LLP Legal Service Contract Amendment No. 2

**SECOND AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES
BETWEEN THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
AND NOSSAMAN LLP.**

This Second Amendment dated as of June 1, 2022 (the “Second Amendment”) to the Agreement for Consultant Services by and between the Sonoma-Marin Area Rail Transit District (“SMART”) and Nossaman LLP (“CONSULTANT”), dated as of May 4, 2021 (the “Original Agreement,” and as amended by the First Amendment and now this Second Amendment, the “Agreement”).

RECITALS

WHEREAS, SMART and CONSULTANT previously entered into the Original Agreement to provide SMART with various legal services regarding litigation, rail transit issues (including railroad regulatory issues), design build projects, eminent domain proceedings and related issues; and

WHEREAS, SMART desires to increase the contract amount of the Agreement by an additional \$250,000 and to extend the term of the Agreement through June 30, 2024.

NOW, THEREFORE, in consideration of the recitals set forth above and the covenants contained herein, it is mutually agreed by and between the parties that:

AGREEMENT

1. **“ARTICLE 4. COMPENSATION”** is hereby amended as follows:

“Total compensation under this Agreement shall not exceed \$525,000.”

2. **“ARTICLE 7. EFFECTIVE DATE AND TERM”** is hereby deleted and replaced with the following:

This Agreement shall be effective as of April 30, 2021 and shall expire on June 30, 2024, unless terminated earlier in accordance with the terms herein.

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

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment as set forth below.

**SONOMA-MARIN AREA RAIL TRANSIT
DISTRICT**

Dated: _____

By _____
Eddy Cumins, General Manager

NOSSAMAN LLP

Dated: _____

By _____
Brad Kuhn, Partner

APPROVED AS TO FORM:

Dated: _____

By _____
District Counsel



June 1, 2022

David Rabbitt, Chair
Sonoma County Board of Supervisors

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

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
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Eddy Cumins
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: Institutional Transit Pass Pilot Program

Dear Board Members:

RECOMMENDATIONS:

Consent to participating in Metropolitan Transportation Commission's (MTC) Institutional Transit Pass Pilot Program

SUMMARY:

Pilot Program Overview

In November 2021, the Bay Area Fare Integration Task Force (FITF) adopted a Policy Vision Statement for fare integration in the 9-county region. The first action in the Statement is "deployment of an all- transit agency institutional/employer pass demonstration pilot in 2022, with a focus on educational institutions, affordable housing properties, and employers of various sizes, pending available resources/technical considerations."

The objective of the pilot is to evaluate the degree to which an institutional transit pass covering all operators may increase transit ridership and better meet the needs of users and institutions, as compared to single-agency passes. The pilot will evaluate program performance and collect data that could be used as the basis of a revenue model for a potential permanent program.

The pilot will be structured in two phases:

- Pilot Phase 1 (Target of 8/2022): Educational institutions and affordable housing properties
- Pilot Phase 2 (2023): Employers in transit-rich locations such as downtown San Francisco, Oakland, and San Jose

This pilot program will be managed by staff from MTC and BART under the continued oversight of the Fare Integration Task Force.

Title VI Approach

MTC will serve as lead agency for the pilot program Title VI process. The pilot project will as a 'pilot' under Title VI, meaning agency boards would only be asked to consider approving Title VI analyses before any permanent successor program is launched, MTC and BART are working with FTA now to request permission for an initial pilot period lasting a minimum of 12 months. Data from the pilot will inform Title VI analysis of any extension beyond 12 months and/or permanent program.

Phases

Phase 1 will include up to 50,000 participants at five Bay Area institutions, of which Santa Rosa Junior College (SRJC) is one. Phase I is targeted to launch in August and run for two years. The transit agency pass would be provided as an added benefit to riders layered on top of a single agency product(s) at no cost to the rider or partner institution.

The Phase 2 details are still under development but is targeted to launch in early 2023 with employees at up to ten Bay Area employers of various sizes.

Impact to SMART

Pre-pandemic, SRJC was part of SMART's institutional pass program. The institutional program was designed to provide a discount for those businesses or higher education institutions that bought in bulk. In May of 2021, we eliminated the institutional pass as the new discounted rates were lower in cost to businesses than what they could obtain through the institutional pass. In addition, with the monthly pass, businesses don't have to buy certain number of passes to qualify for the lower rate.

Currently, SJRC purchases monthly passes from SMART based on student request, with the student paying half of the cost. The demand has been low during the pandemic due to remote learning. SRJC students have also had free passes on the three Sonoma County bus operators (Santa Rosa Citybus, Sonoma County Transit, and Petaluma Transit). The Institutional Transit Pass Pilot Program will mean that SRJC students also have free passes to SMART, Golden Gate Transit, and all other Bay Area transit operators on the Clipper system (e.g. BART, Muni). SJRC boardings on SMART are anticipated to increase with the introduction of this program, as well as usage of other systems.

The pilot will offer passes to up to 25% of the SRJC student population (5,000 - 7,000). However, students will have to proactively register for the program, so it is likely the actual usage will be lower than 25% of the student population.

FISCAL IMPACT: The MTC Commission has identified up to \$85 million of regional funds for Transit Transformation Action Plan near term priorities, including \$28 million for fare integration activities. Of this amount, approximately \$6 million is targeted toward this Institutional/employer pilot project. From this \$6 million, \$4.5 million is budgeted to make whole agency revenue impacts associated with Phase 1; a \$1 million fund to make whole agency revenue impacts associated with Phase 2; and \$500,000 budgeted for other administrative costs, including consulting support, Clipper card purchases, and communications.

The Year 1 allocation for the pilot will be an upfront payment of \$9,142 for SMART, which is our share of \$2.2 million based on fare revenue in FY 2018-19. The Year 2 allocation, which will also total \$2.2 million regionally, is intended to be a "Top Up" based on actual usage observed during the first year of the pilot.

A separate allocation of Transit Transformation Action Plan staffing funds will provide for 1.5 FTE (1 at BART and 0.5 at MTC).

Very Truly Yours,

/s/

Heather McKillop
Chief Financial Officer



June 1, 2022

David Rabbitt, Chair
Sonoma County Board of Supervisors

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

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Damon Connolly
Marin County Board of Supervisors

Chris Coursey
Sonoma County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
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Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Eddy Cumins
General Manager

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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: Revision to the Amended Fiscal Year 2021-2022 Freight Budget

Dear Board Members:

RECOMMENDATIONS:

Approve Resolution No. 2022-20 which revises Resolution Nos: 2021-11, 2022-03, 2022-05, and 2022-17 of the Fiscal Year 2021-2022 Budget

SUMMARY:

On March 1, 2022, SMART took over freight operations from the Northwestern Pacific Railroad Company. We received approval from the Board to use a 3rd Party freight operator, contracted on a temporary basis while SMART went through the recruitment and hiring process. The contract with the vendor was for three months with month-to-month extensions available.

The recruitment for Freight Utility Worker was opened on January 31, 2022, after the Board of Directors approved the Freight Budget and the positions were authorized.

The Freight Utility Worker position requires freight staff to be able to perform more than one function for the railroad, such as operating trains and inspecting the tracks, which extended the length of time necessary to find qualified applicants. We currently have enough applicants in background to fill the approved positions, however, we have been experiencing some challenges with getting appointments for pre-employment physicals and testing scheduled due to our contracted providers being booked out one to two weeks into the future.

Based on these challenges, we are hoping to have all qualified applicants through the pre-employment process by July 1, 2022, but this will require us to extend the contract one more month through June 30, 2022. Although we have contract authority for this extension, we need to budget the funds for the additional month. We have estimated that we will need \$121,973. In addition, with the increasing price of fuel, we also anticipate needing an additional \$5,000 for fuel for May and June.

FISCAL IMPACT: The total request is \$126,973. The funds are available in Fiscal Year 2022. Utilizing the funds this year will reduce the funds that will be carried forward from Fiscal Year 2022 to Fiscal Year 2023. See Attachment I

Very Truly Yours,

/s/
Heather McKillop
Chief Financial Officer

Attachments:

- 1) Resolution No. 2022-20
- 2) Attachment I

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT AMENDING RESOLUTION NOS. 2021-11, 2022-03, 2022-05, AND 2022-17 TO REVISE THE ANNUAL FREIGHT BUDGET FOR FISCAL YEAR 2021-2022 TO PROVIDE FOR REVISED EXPENDITURE AUTHORITY

WHEREAS, as part of its approval of the Annual Budget for Fiscal Year 2021-22, the Board duly considered the annual expenditures necessary for the Sonoma-Marín Area Rail Transit District; and

WHEREAS, on June 2, 2021, the Board adopted Resolution No. 2021-11 approving the annual budget for Fiscal Year 2021-22; and

WHEREAS, on January 5, 2022, the Board adopted Resolution No. 2022-03 amending the annual budget for Fiscal Year 2021-22 to include Freight; and

WHEREAS, on February 16, 2022, the Board adopted Resolution No. 2022-05 amending the annual budget for Fiscal Year 2021-22; and

WHEREAS, on April 20, 2022, the Board adopted Resolution No. 2022-17 amending the annual budget for Fiscal Year 2021-22; and

WHEREAS, Resolution Nos. 2021-11, 2022-03, 2022-05, and 2022-17 considered the appropriation of funds for operating expenses; and

WHEREAS the Board desires to amend the Annual Budget to provide for increased appropriation authority for costs associated with freight service; and

NOW, THEREFORE, BE IT RESOLVED THAT the expenditure authority in Resolution No. 2021-11 and subsequent amendments of the Fiscal Year 2021-22 budget is hereby increased in accordance with Attachment I.

BE IT FURTHER RESOLVED except as specifically amended or supplemented by this Resolution, Resolution No. 2021-11, 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. 2021-11.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 1st day of June 2022, 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

Attachment I				
JUNE 1, 2022 REVISED FREIGHT BUDGET: SOURCES AND USES				
		FY 2021-22	FY 2021-22	FY 2021-22
		Amended Budget + Revisions	06/01/2022 Changes	Revised Budget 06/01/2022
Budgeted Revenue				
1	CalSTA Funds - Freight Rights (42340)	\$ 4,000,000	\$ -	\$ 4,000,000
2	CalSTA Funds - Other Freight Funds (42341)	\$ 1,803,473	\$ -	\$ 1,803,473
3	Freight Movement Revenue (43600)	\$ 372,000	\$ -	\$ 372,000
4	Storage Fees (45600)	\$ 30,800	\$ -	\$ 30,800
5	Storage Fees - LPG (43600)	\$ 84,600	\$ -	\$ 84,600
6	Total All Revenues	\$ 6,290,873	\$ -	\$ 6,290,873
7	Beginning Fund Balance	\$ -	\$ -	\$ -
8	Total Revenues + Beginning Fund Balance	\$ 6,290,873	\$ -	\$ 6,290,873
Budgeted Expenditures				
9	Salaries & Benefits	79,329	-	79,329
10	Services & Supplies	801,385	126,973	928,358
11	Equipment, Buildings & Improvements	4,000,000	-	4,000,000
12	Capital Projects	175,484	-	175,484
15	Total Budgeted Expenditures	\$ 5,056,198	\$ 126,973	\$ 5,183,171
16	Total Revenues Less Budgeted Expenditures	\$ 1,234,675	\$ (126,973)	\$ 1,107,702
17	Estimated FY Ending Fund Balance	\$ 1,234,675	\$ (126,973)	\$ 1,107,702



June 1, 2022

David Rabbitt, Chair
Sonoma County Board of Supervisors

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

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SUBJECT: Authorize the General Manager to Award Contract No. IT-PS-22-001 to SPTJ Consulting, Inc. to provide Network Monitoring and Support Services.

Dear Board Members:

RECOMMENDATION:

Staff recommends authorizing the General Manager to award Contract No. IT-PS-22-001 to SPTJ Consulting, Inc. to provide network monitoring and support services with a not-to-exceed amount of \$303,219 for each Fiscal Year included in the initial three-year term.

SUMMARY:

SMART contracts with a consultant to provide ongoing management and maintenance support for SMART's Administration Network. The SMART Administration Network encompasses the configuration of network equipment located at four SMART facilities. This network manages all data, voice, and video transmission within and between SMART's facilities, including connections to fare collection equipment, CCTV security equipment, fare vending equipment, and card payment systems.

This consultant is responsible for maintaining a 99.9% uptime of SMART's Administration Network by providing on-call 24/7 onsite and remote support and monitoring, managing equipment warranties and warranty repair, and regular system and security updates. A secure and reliable Administration Network is critical to support SMART's operations.

The existing contract for these services expires on June 30, 2022. In anticipation of the contract expiration, SMART issued a Request for Proposal (RFP) on March 25, 2022, under Solicitation No. IT-PS-22-001.

SMART received 4 responsive proposals from the following firms:

1. MGT of America Consulting, LLC
2. NetXperts, Inc.
3. SoftSages Technology
4. SPTJ Consulting, Inc.

SMART's selection committee reviewed the proposals using the evaluation criteria specified in the RFP. The criteria included: service approach; experience and qualifications; demonstrated history of performing similar work; and pricing. Following the evaluation of the proposals, the selection committee opened negotiations with the top ranked firm and subsequently made the determination that SPTJ Consulting, Inc. provides the overall best benefit to SMART and is recommending the firm for the award of this contract.

Staff recommends authorizing the General Manager to award Contract No. IT-PS-22-001 to SPTJ Consulting, Inc. to provide network monitoring and support services with a not-to-exceed amount of \$303,219 for each Fiscal Year included in the initial three-year term. This contract also has one two-year option to extend at SMART's discretion following the initial term.

FISCAL IMPACT: Funding is included in the Fiscal Year 2022-23 budget and assumed in subsequent years.

REVIEWED BY: ☐ Finance /s/ ☐ Counsel /s/

Very truly yours,

 /s/
Ken Hendricks
Procurement Manager

Attachment(s): SPTJ Consulting, Inc. Contract Agreement No. IT-PS-22-001

AGREEMENT FOR CONSULTANT SERVICES

This agreement (“Agreement”), dated as of July 1, 2022 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District (hereinafter “SMART”), and SPTJ Consulting, Inc. (hereinafter “Consultant”).

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and experienced in the areas of network monitoring and support and related services; and

WHEREAS, in the judgment of the Board of Directors of SMART or District, it is necessary and desirable to employ the services of Consultant for network monitoring and support services.

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

AGREEMENT

ARTICLE 1. RECITALS.

Section 1.01 The above Recitals are true and correct.

ARTICLE 2. LIST OF EXHIBITS.

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

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

ARTICLE 3. REQUEST FOR SERVICES.

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

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

ARTICLE 4. SCOPE OF SERVICES.

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

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

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

Section 4.04 Assigned Personnel.

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

ARTICLE 5. PAYMENT.

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

Section 5.01 Consultant shall invoice SMART on a monthly basis, detailing the

tasks performed pursuant to the Scope of Work requested by the SMART Manager and the hours worked. SMART shall pay Consultant within 30 days after submission of the invoices.

Section 5.02 Consultant shall be paid in accordance with the rates established in **Exhibit B**; provided, however, that total payments to Consultant shall not exceed \$303,219 for Fiscal Year 2023, \$303,219 for Fiscal Year 2024, and \$303,219 for Fiscal Year 2025 without the prior written approval of SMART. Consultant shall submit its invoices in arrears on a monthly basis in a form approved by the Chief Financial Officer. The invoices shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. All reimbursable expenses must comply with SMART's Travel Guidelines and must receive prior written approval. Consultant's reimbursement for materials/expenses shall not include items already included in Consultant's overhead as may be billed as a part of its labor rates set forth in **Exhibit B**. SMART does not reimburse Consultant for travel time.

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

ARTICLE 6. TERM OF AGREEMENT.

Section 6.01 The term of this Agreement shall remain in effect until June 30, 2025, with one two-year option to extend thereafter at SMART's sole discretion unless terminated earlier in accordance with the provisions of **Article 7** below.

ARTICLE 7. TERMINATION.

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

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

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

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

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

ARTICLE 8. INDEMNIFICATION

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

ARTICLE 9. INSURANCE.

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

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

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

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

Section 9.04 Technology Professional Liability Errors and Omissions Insurance appropriate to the Consultant's profession and work hereunder, with limits not less than 2,000,000 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Consultant in this Agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

- a. The Policy shall include, or be endorsed to include, ***property damage liability coverage*** for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the Agency in the care, custody, or control of the Vendor. If not covered under the Vendor's liability policy, such "property" coverage of the Agency may be endorsed onto the Vendor's Cyber Liability Policy as covered property as follows:
- b. **Cyber Liability coverage** in an amount sufficient to cover the full replacement value of damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the Agency that will be in the care, custody, or control of Vendor.

The insurance obligations under this Agreement shall be the greater of 1—all the insurance coverage and limits carried by or available to the Consultant; or 2—the minimum insurance requirements shown in this Agreement. Any insurance proceeds in excess of the specified limits and coverage required, which are applicable to a given loss, shall be available to SMART. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the indemnity or other obligations of the Consultant under this Agreement.

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 10. PROSECUTION OF WORK.

When work is requested of Consultant by SMART, all due diligence shall be exercised

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

ARTICLE 11. EXTRA OR CHANGED WORK.

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

ARTICLE 12. REPRESENTATIONS OF CONSULTANT.

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

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

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

Consultant agrees to furnish SMART with proof of payment of taxes on these earnings.

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

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

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

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

Section 12.08 Ownership And Disclosure Of Work Product. Any and all work product resulting from this Agreement is commissioned by SMART as a work for hire. SMART shall be considered, for all purposes, the author of the work product and shall have all rights of authorship to the work, including, but not limited to, the exclusive right to use, publish, reproduce, copy and make derivative use of, the work product or otherwise grant others limited

rights to use the work product. To the extent Consultant incorporates into the work product any pre-existing work product owned by Consultant, Consultant hereby acknowledges and agrees that ownership of such work product shall be transferred to SMART. All reports, original drawings, graphics, plans, studies, and other data or documents (“documents”), in whatever form or format, assembled or prepared by Consultant and other agents in connection with this Agreement shall be the property of SMART. SMART shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to SMART all such documents, which have not already been provided to SMART in such form or format, as SMART deems appropriate. Such documents shall be and will remain the property of SMART without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of SMART.

ARTICLE 13. DEMAND FOR ASSURANCE.

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

ARTICLE 14. ASSIGNMENT AND DELEGATION.

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

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

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

If to SMART Manager:

Sonoma-Marín Area Rail Transit District
Attn: Bryan Crowley,
Information Systems Manager.

5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
bcrowley@sonomamarintrain.org
707-794-3330

If to SMART Billing:

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

If to Consultant:

SPTJ Consulting, Inc.
Attn: Chien Liew
Chief Executive Officer
733 Front Street, #411
San Francisco, CA 94111
cliew@sptj.com
415-309-3613

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 Use of Recycled Paper. SMART requires that all printing jobs produced under this Agreement be printed on recycled content papers. Recycled-content papers are defined as papers containing a minimum of 30 percent postconsumer fiber by weight. All papers used in the performance of a print job for SMART shall be recycled-content paper. The recycle logo or "chasing arrows" cannot be used on printed material unless the paper contains a minimum of 30 percent postconsumer material. If paper meets the 30 percent requirement, ask that the recycling logo be printed on the project.

Section 16.02 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 16.03 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. Consultant and SMART acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and SMART acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

Section 16.04 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.

CONSULTANT: SPTJ CONSULTING, INC.

By: _____
Chien Liew, Chief Executive Officer

Date: _____

SONOMA-MARIN AREA RAIL TRANSIT (SMART)

By: _____
Eddy Cumins, General Manager

Date: _____

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

By: _____
Ken Hendricks, Procurement Manager

Date: _____

APPROVED AS TO FORM FOR SMART:

By: _____
District Counsel

Date: _____

EXHIBIT A

SCOPE OF WORK & TIMELINE

I. Overview

The Sonoma-Marín Area Rail Transit District (SMART) is contracting with SPTJ Consulting, Inc. to provide ongoing management and maintenance support for the SMART Admin Network. SMART places high importance on a functioning Admin Network to perform operationally critical activities.

The Consultant shall be required to sign SMART's Confidentiality and Non-Disclosure Agreement prior to the start of any work being performed under this Agreement.

The SMART Admin Network

The SMART Admin Network encompasses the configuration of network equipment necessary to allow for and manage data, voice, and video transmission within and between SMART offices.

Currently, the SMART Admin Network consists of networking equipment housed at four SMART office locations. Most of the work described in this Scope of Work can be done remotely. Occasional, infrequent on-site work may be required. Additional locations may be added in the future. The current locations are:

- Petaluma HQ – Petaluma, CA
- Rail Operations Center (ROC) – Santa Rosa, CA
- Fulton MOW – Fulton, CA
- Roblar MOW – Novato, CA

CISCO hardware is used for the SMART Admin Network and includes firewalls, routers, switches, wireless access points, and VPN appliances. Listed below in Table 1 are the current SMART Admin Network devices in use. Devices may be added or removed at SMART's discretion.

Table 1.

Location	Device Type	Quantity
Petaluma Office - Petaluma	Monitoring Server	1
	Domain Controller Server	2
	Internet Router	2
	WAN Router	2
	Firewall	2
	VPN Concentrator	2
	Internal Router	2
	Switch	15
	Wireless Lan Controller	1
	Wireless Access Point	5
Rail Operations Center – Santa Rosa	Monitoring Server	1
	Domain Controller Server	1
	Internet Router	2
	IPSec Router	2
	WAN Router	2
	Firewall	2
	VPN Concentrator	2
	Internal Router	2
	Switch	14
	Point of Entry Router	2
	Wireless Lan Controller	1
	Wireless Access Point	5
Fulton MOW Facility	Monitoring Server	1
	Domain Controller Server	1
	Internet Router	1
	WAN Router	1
	Firewall	1
	VPN Concentrator	1
	Internal Router	1
	Switch	4
	Wireless Lan Controller	1
	Wireless Access Point	2
Roblar MOW Facility	Monitoring Server	1
	Domain Controller Server	1
	Internet Router	1
	WAN Router	1
	Firewall	1
	VPN Concentrator	1
	Internal Router	1
	Switch	5
	Wireless Lan Controller	1
	Wireless Access Point	3

II. Project Management

All work shall be initiated, scheduled, and reviewed by SMART's Information Systems Manager or designee ("SMART Manager"). Work shall be initiated by written task order.

Consultant shall provide two monthly check-in phone meetings with the SMART Manager to report on system issues, progress on system maintenance and upgrades, and future planning of the SMART Admin Network.

III. Scope of Work

Task No. 1 - SMART Admin Network Management and Maintenance

Consultant shall provide the following management and maintenance services to provide continuous monitoring of the SMART Admin Network functionality and ensure 99.9% uptime of the SMART Admin Network:

A. Hardware and software management and maintenance:

- i. Maintain and monitor all CISCO hardware to ensure optimal functionality on all devices per manufacturer recommendations. Ensure that all devices are patched as required.
- ii. Work with Domain Controller servers to manage Active Directory, DNS, and DHCP for all office locations.
- iii. Manage warranties and warranty repair and replacement work associated with SMART Admin Network hardware.
- iv. Manage external connections for the SMART Admin Network. Check and maintain network points of entry for critical services including:
 - i. Fare Collection
 - ii. CCTV
 - iii. PCI (Card Payments)
 - iv. Fare Vending

B. Install up to two (2) software updates annually per device for the SMART Admin Network infrastructure hardware. Scheduling of these updates will require pre-approval from the SMART Manager.

C. Perform system restarts as directed and required after normal business hours and on weekends. All preventive maintenance related downtime will be outside of normal business hours. Normal business hours are 0800 – 1700, Monday – Friday.

D. Perform regular testing, checks, and analysis of CISCO systems use. Proactively recommend patches and upgrades to ensure system health and security.

- E. Manage VPN access to SMART systems including user account management.
- F. Make hardware recommendations to SMART Manager as part of SMART hardware replacement lifecycle.
- G. Make recommendations for the purchase and implementation of Cisco SmartNet licenses.
- H. Assist in troubleshooting network issues when required.
- I. Configure new equipment required to ensure secure, reliable communications between all current and future SMART offices.
- J. Consultant shall be responsible for maintaining system documentation. Existing documentation includes the following:
 - 1) As-built Network Topology and Block Diagrams
 - 2) As-built Network IP Address Schema
 - 3) Any office specific configuration data.
 - 4) Detailed Bill of Materials
 - 5) As-built Site Books for each SMART office, which includes:
 - 6) Cable schedule / termination details (copper and fiber)
 - 7) Rack layout / elevation
 - 8) Power distribution layout
 - 9) Site material list

Task No. 2 - As Needed Onsite IT Support

Consultant shall provide as-needed Level 1 IT support (basic helpdesk support) onsite at a SMART location under the following two conditions:

- a) Emergency Support – Consultant shall provide onsite support personnel within 3 hours of request by SMART Manager.
- b) Scheduled Supplemental Support - Consultant shall provide onsite support personnel on a short-term basis within 48 hours of request by SMART Manager.

Task No. 3 - On-Call Support Services

Consultant may be requested to perform additional services above those listed above. These services will be issued by written task order and shall be on a time and materials basis. The following services may be requested under this section:

- a) Provisioning or installing of new and/or additional hardware. This does not include construction activities requiring a contractor's license.
- b) Upgrades or reprogramming to add new capabilities or functionality to supported product.
- c) Any additional work mutually agreed upon between the SMART Manager and Consultant.

Process for Requesting Task-Order Based On-Call Support Services:

1. The SMART Manager shall contact Consultant and provide a written request for services. This request will include a detailed scope of work, timeline for completion, and any other information deemed necessary for Consultant to be able to produce a quote.
2. Consultant shall submit a quote and time estimate to SMART'S Project Manager within 5 business days. The quote must be written in accordance with the time and materials rates established in Exhibit B.
3. SMART's Project Manager shall review the quote and decide whether to proceed as written, cancel, or modify the scope requirements. Any scope modifications will require the Consultant to produce a revised quote for review.
4. If SMART decides to proceed with the work, SMART'S Project Manager will issue a written task order detailing the scope of work, timeline for completion, and the agreed upon not-to-exceed amount. All work issued under the task order shall be completed based upon a mutually agreed upon date and time.

IV. Timeline for Each Requirement / Task

Consultant shall continuously monitor the SMART Admin Network. Any discovered issues with the network shall be addressed by Consultant immediately upon discovery of those issues.

If an issue is discovered where a feature of the SMART Admin Network will be unavailable for more than 30 minutes, Consultant shall notify the SMART Manager by email or phone call within 30 minutes of issue discovery.

Consultant shall acknowledge requests for services from the SMART Manager within 1 hour of SMART contacting Consultant or submitting a support ticket.

Prior to the end of the Agreement term, Consultant shall assist the SMART Manager with system handover, as needed, prior to the commencement of any subsequent Agreement term.

V. Acceptance Criteria

At the conclusion of each service request or task order, the SMART Manager or designee shall review all work performed. If the work was not performed per the requirements, Consultant shall be instructed to correct the defective work at the sole expense of the Consultant prior to recommending an invoice be submitted.

EXHIBIT B
SCHEDULE OF RATES

Task 1 – SMART Admin Network Management and Maintenance

Initial Term (7/1/2022 – 6/30/2025)	
Task Description	Monthly Fixed Fee
Task 1	\$16,868.25

Optional 2-Year Term (7/1/2025 – 6/30/2027)	
Task Description	Monthly Fixed Fee
Task 1	\$17,711.96

Task 2 – As Needed Onsite IT Support -Term (7/1/2022 – 6/30/2025)

Key Personnel	Hourly Rate
Chien Liew	\$141.75
Wilson Wong	\$141.75
Portola Systems Engineer	\$225.00

All hourly rates shall be fixed for the initial three-year term. Upon completion of the initial three-year term, and prior to the commencement of the optional term of this Agreement, Consultant may, upon 30 days written notice to SMART, request an increase in the hourly rate equal to the Consumer Price Index, San Francisco Area, as reported by the Bureau of Labor Statistics, U.S. Department of Labor, using the month of April for the most recent year. The maximum increase shall be 5%

All materials, if any, shall be invoiced to SMART at cost with receipt documentation submitted with the invoice.

Task 3 - On Call Support Services - Term (7/1/2022 – 6/30/2025)

Key Personnel	Hourly Rate
Chien Liew	\$141.75
Wilson Wong	\$141.75

All rates shall be fixed for the initial three-year term. Upon completion of the initial three-year term, and prior to the commencement of the optional term of this Agreement, Consultant may, upon 30 days written notice to SMART, request an increase in the hourly fee equal to the Consumer Price Index, San Francisco Area, as reported by the Bureau of Labor Statistics, U.S. Department of Labor, using the month of April for the most recent year. The maximum increase shall be 5%

All materials, if any, shall be invoiced to SMART at cost with receipt documentation submitted with the invoice.

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

1. General.

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

It is the responsibility of the Contractor and its subcontractors to ensure that all clauses included in this Exhibit applicable to the work specified within the Agreement are adhered to by the Contractor and its subcontractors.

2. Access To Records and Reports.

Applicability: All Contracts

Contractor shall comply with the following requirements:

- (a) Record Retention. Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-Contracts, leases, subcontracts, arrangements, other third-party Contracts of any type, and supporting materials related to those records.
- (b) Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. §200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- (c) Access to Records. The Contractor agrees to provide access to SMART, FTA and its contractors to inspect and audit records and information related to performance of this

contract as reasonably may be required. Contractor shall also 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.

(d) Access to the Site of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

(e) 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.

3. ADA Access

Applicability: All Construction, Architecture & Engineering, Operations Management, and

Rolling Stock Contracts

The contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (d), which states that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The contractor also agrees to comply with all applicable requirements of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

4. Buy America.

Applicability: All Rollingstock Purchases, Materials and Supplies Contracts, and Construction Contracts >\$150,000.

The Contractor agrees to comply with 49 U.S.C. 5323(j) as amended by MAP-21, 49 U.S.C. 5323(h), 49 C.F.R. Part 661 and FAST Act (Pub. L 114-94), which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a sixty percent (60%) domestic content for FY16 & FY17; sixty-five percent (65%) domestic content for FY18 & FY19; and seventy percent (70%) domestic content for FY20 & beyond.

Contractor shall submit to SMART the appropriate Buy America certification with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or

offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

5. Lobbying

Applicability: All Contracts > \$100,000

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 - Contractors who apply or bid for an award of \$100,000 or more shall 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 a Federal 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 certifies to the tier above that it will not and has not taken any action involving the Project or the Underlying Agreement for the Project, including any award, extension, or modification. Each tier shall 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 SMART.

6. Cargo Preference Requirements.

Applicability: All Rolling Stock Purchases, Materials & Supplies, and Construction Contracts which require transportation by ocean vessels.

The Contractor agrees to:

(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 described in the preceding paragraph, 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.

7. Charter Service.

Applicability: All Operations & Management Contracts

The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 C.F.R. part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be “incidental”, i.e., it must not interfere with or detract from the provision of mass transportation.

8. Civil Rights.

Applicability: All Contracts

The following Federal Civil Rights laws and regulations apply to the Agreement:

1. **Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:
 - a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
 - b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, “Equal Employment Opportunity,” September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.
2. **Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
3. **Nondiscrimination on the Basis of Age.** The “Age Discrimination Act of 1975,” as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

4. **Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

Civil Rights and Equal Opportunity

The Sonoma-Marin Area Rail Transit District is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with 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, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., 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. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. 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, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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.
3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S.

Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, 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.

4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
5. **Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA.

9. Clean Air Act

Applicability: All Contracts > \$150,000

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401-7671(q) et seq. The Contractor agrees to report each violation to SMART, the FTA, and the Regional Office of the Environmental Protection Agency.

The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the FTA.

10. Clean Water Act

Applicability: All Contracts > \$150,000

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Water Act, as amended, 33 U.S.C. §§ 1251 - 1377 et seq.
- (2) The contractor agrees to report each violation to the SMART and understands and agrees that SMART will, in turn, report each violation as required to assure notification to the FTA, and the appropriate Environmental Protection Agency Regional Office in compliance with the notice of violating facility provisions in section 508 of the Clean Water Act, as amended, 33 U.S.C. 1368.

- (3) The Contractor agrees to protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f-300j-6.
- (4) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.”

11. Conformance with National ITS Architecture

Applicability: All ITS Contracts

Intelligent Transportation Systems (ITS) property and services must comply with the National ITS Architecture and Standards to the extent required by 23 U.S.C Section 517(d) and FTA Notice, “FTA National ITS Architecture Policy on Transit Projects”, 66FR 1455 et seq., January 8, 2001, and later published policies or implementing directives FTA may issue. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture.

12. Contract Work Hours and Safety Standards Act.

Applicability: All Operations Management, Rolling Stock Purchases, and Construction Contracts >\$100,000.

- a. Where applicable (see 40 U.S.C. § 3701 et seq), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.
- b. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of 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.
- c. 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. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in

such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

- (2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. SMART shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

13. Davis Bacon Act and Copeland Anti-Kickback Act

Applicability: All Construction Contracts > \$2,000

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, et seq. and 18 USC 874. The Acts apply to SMART’s construction contracts and subcontracts that “at least partly are financed by a loan of grant from the Federal Government”. 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. Construction for purposes of the Acts, include “actual construction, alteration, and/or repair, including painting and decorating” as defined by 29 CFR 5.5(a).

Contractors and subcontractors at any contract tier agree to comply with the Davis-Bacon Act 40 USC 3141, et seq and implementing DOL regulations “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction” 29 CFR Part 5.

In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

SMART has attached to the Agreement a copy of the current prevailing wage determination issued by the Department of Labor which must be adhered to by the Contractor and all subcontractors. Contractor shall report all suspected or reported violations to the SMART who will intern report all violations to the Federal awarding agency.

“Compliance with the Copeland “Anti-Kickback” Act.

- (1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FTA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

14. Debarment and Suspension

Applicability: All Contracts > \$25,000

- (1) This contract is a covered transaction for purposes of 49 CFR Part 18. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) By signing the Agreement or accepting the Purchase Order, the Contractor certifies as follows:

The certification in this clause is a material representation of fact relied upon by the SMART. If it is later determined that the contractor 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 Contractor agrees to comply with the

requirements of 2 CFR 180 throughout the period of this contract.

15. Disadvantaged Business Enterprise (DBE)

Applicability: All Contracts

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as SMART deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).
- (5) Termination of the Contract

The Contractor shall report its DBE participation obtained through race-neutral means through the period of performance with all invoices submitted.

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

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

The Contractor must promptly notify SMART whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at

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

It is the policy of SMART and the United States Department of Transportation (“DOT”) that Disadvantaged Business Enterprises (“DBE’s”), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

16. DHS Seal, Logo, and Flags.

Applicability: All Contracts

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FTA pre-approval.

17. Energy Conservation.

Applicability: All Contracts

The Consultant 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. The consultant agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA funds required under FTA regulations, “Requirements for Energy Assessments,” 49 CFR part 622, subpart C.

18. Federal Changes.

Applicability: All Contracts

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 the Sonoma-Marín Area Rail Transit District and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

19. Fly America.

Applicability: All Contracts

The Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10.131 – 301-10.143, which provide that recipients and sub-recipients of Federal funds

and their consultants 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. The Contractor shall submit, if a foreign air carrier was used, 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.

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

Applicability: All Contracts

Incorporation of Federal Transit Administration (FTA) Terms - The provisions within 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 the current FTA Circular 4220 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 Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

21. No Obligation by the Federal Government.

Applicability: All Contracts

The Sonoma-Marín Area Rail Transit District (SMART) and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Agency, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

22. Notice of Legal Matters.

Applicability: All Contracts > \$25,000

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the SMART is located. The Contractor must include a similar notification requirement in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

- (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
- (3) Additional Notice to the U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

23. Patent Rights and Rights in Data and Copyrights Requirements.

Applicability: All Research Project Contracts

Intellectual Property Rights

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the Sonoma-Marín Area Rail Transit District intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT.

The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions:

Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution.

For purposes of this Contract, the term “subject data” means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of “subject data” include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Federal Government Purposes,” any subject data or copyright described below. For “Federal Government Purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.
 - a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
 - b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA’s license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
4. Nothing contained in this clause on rights in data shall imply a license to the

Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.
6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

24. Pre-Award and Post Delivery Audits Requirements.

Applicability: All Rolling Stock/Turnkey Acquisition Contracts

A Buy America certification under this part shall be issued in addition to any certification which may be required by 49 CFR Part 661. Nothing in this part precludes the FTA from conducting a Buy America investigation under part 661 of this title “Pre-Award and Post-Delivery Audit Requirements”.

The Contractor agrees to comply with “Buy America Requirements-Surface Transportation Assistance Act of 1982, as amended by 49 CFR 661.12, but has been modified to include FTA’s Buy America requirements codified at 49 U.S.C. A 5323(j).

Pre-Award and Post-Delivery Audit Requirements – The Contractor agrees to comply with 49 U.S.C. 5323(I) and FTA’s implementing regulation at 49 CFR Part 663 and to submit the following certifications:

- 1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the firm certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
- 2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the solicitation specifications.
- 3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit a) manufacturer’s FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or b) manufacturer’s certified statement that the contracted buses will not be subject to FMVSS regulations.

25. Recycled Products.

Applicability: All Contracts > \$10,000

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), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. The Contractor agrees to comply with the U.S. Environmental Protection Agency (US EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials”, 40 CFR Part 247.

26. Program Fraud and False or Fraudulent Statements and Related Acts

Applicability: All Contracts

(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.

27. Prompt Payment.

Applicability: All Contracts

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor’s receipt of payment for that work. In addition, the contractor is required to

return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed. The contractor must promptly notify SMART, whenever a DBE subcontractor performing work related to this contract 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.

28. Safe Operation of Motor Vehicles.

Applicability: All Contracts

- (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.

29. Seismic Safety.

Applicability: All A&E and Construction Contracts

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed

by a subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project. The Contractor will facilitate and follow Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. 7704 note, except as the Federal Government determines otherwise in writing.

30. Transit Employee Protective Agreements

Applicability: All Transit Operations Contracts

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator.

- i. General Transit Employee Protective Requirements – To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 CFR Part 215, and any amendments thereto. The requirements of this subsection however do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. 5311. Alternate provisions for those projects are set forth in subsections (B) and (C) of this clause.
- ii. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. 5310(a)(2) for Elderly Individuals and Individuals with Disabilities – If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. 5333(b) are necessary or appropriate for the state and SMART for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. 5333(b), U.S. DOL guidelines at 29 CFR Part 215, and any amendments thereto.
- iii. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. 5311 in Non-Urbanized Areas – If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.
- iv. The Contractor also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance by FTA.

31. Special DOL EEO Clause

Applicability: All Construction Contracts > \$10,000

The contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60- 741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

32. Drug and Alcohol Testing

Applicability: All Transit Operations Service Contracts

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency, or the Sonoma-Marín Area Rail Transit District, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with part 655 before June 30 and to submit the Management Information System (MIS) reports to the Sonoma-Marín Area Rail Transit District. To certify compliance the Contractor shall use the “Substance Abuse Certifications” in the “Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements”, which is published annually in the Federal Registrar.

33. Termination.

Applicability: All Contracts > \$10,000

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 SMART’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 [Breach or Cause]. 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 Contract 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) calendar 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) calendar 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 (Professional or Transit Service Contracts) SMART, by written notice, may terminate this contract, in whole or in part, when it is in SMART's best interest. If this contract is terminated, SMART shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

(f) Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract 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 the Agency.

(g) Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination

specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Agency goods, the Contractor shall, upon direction of the Agency, protect and preserve the goods until surrendered to the Agency or its agent. The Contractor and Agency shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract 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 the Agency.

(h) Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Agency may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Agency resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Agency in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if:

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract.
3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

(i) Termination for Convenience or Default (Architect and Engineering Contracts). SMART may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency 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 the Agency 's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the Agency, the Agency's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

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

If, after termination for failure to fulfill contract 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 Agency.

(j) Termination for Convenience or Default (Cost Type Contracts) The Agency may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of Agency or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Agency, or property supplied to the Contractor by the Agency. If the termination is for default, the Agency may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Agency and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Agency, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a Notice of Termination for Default, the Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

34. Veterans Hiring Preference.

Applicability: All Contracts

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

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

35. Violation and Breach of Contract.

Applicability: All Contracts

Rights and Remedies of SMART

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.

Rights and Remedies of Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by SMART, the Contractor expressly agrees that no default, act or omission of SMART shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless SMART directs Contractor to do so) or to suspend or abandon performance.

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.

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.

Performance during Dispute

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

Claims for Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it 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.

36. Geographic Restrictions.

Applicability: All Contracts

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

37. Metric System.

Applicability: All Contracts

To the extent required by U.S. DOT or FTA, Contractor shall use the metric system of measurement in its project activities pursuant to the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 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, SMART agrees to accept products and services with dimensions expressed in the metric system of measurement.

38. Environmental Protection.

Applicability: All Contracts

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.

39. Privacy Act.

Applicability: All Contracts

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. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. 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.

40. Transit Vehicle Manufacturer (TVM) Certifications

Applicability: All Rolling Stock Contracts

49 CFR 26.49 – Contractor must submit to SMART a certification from each transit vehicle manufacture that desires to bid or propose upon a DOT-assisted transit vehicle procurement that it has complied with the requirements of 49 CFR 26.49. SMART may, however, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the overall goal setting procedures.

41. Federal Tax Liability and Recent Felony Convictions

Applicability: All Contracts

- A. Contractor certifies that it does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that it is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- B. Contractor certifies that it was not convicted of felony criminal violation under any Federal law within the preceding twenty-four (24) months.

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

Applicability: All Research and Development Contracts

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

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

Applicability: All Contracts

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

44. Domestic Preferences for Procurements

Applicability: All Contracts

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

For the purposes of this section:

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



David Rabbitt, Chair
Sonoma County Board of Supervisors

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

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Damon Connolly
Marin County Board of Supervisors

Chris Coursey
Sonoma County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Eddy Cumins
General Manager

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

June 1, 2022

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

SUBJECT: Approve a Resolution Authorizing the General Manager to Award Contract No. EV-PS-22-001 with WRA, Inc for a contract amount of \$450,000 and a term of 3 years, with two additional one-year options to extend at \$150,000 per year.

Dear Board Members:

RECOMMENDATION:

Approve Resolution No. 2022-21 authorizing the General Manager to award Contract No. EV-PS-22-001 to WRA, Inc. for As-Needed Environmental Consulting Services for a total not-to-exceed contract amount of \$450,000 and a term of 3 years, with two additional one-year options to extend at \$150,000 per year.

SUMMARY:

This professional services contract will provide continued assistance with environmental permitting, field studies, environmental reviews, and on-going monitoring of mitigation projects.

BACKGROUND:

The SMART train passes through amazing natural areas consisting of wetlands, wooded uplands, across creeks and rivers that are home to a variety of wildlife, including some that have endangered species status. Thus, we must be very careful when extending the system, constructing pathways, and making improvements to the system. Securing the necessary environmental permits to construct work in the right-of-way is a complex undertaking that requires an understanding of the natural environment as well as the intricacies of regulatory permitting. SMART has utilized environmental consultants to assist with these areas.

SMART issued a Request for Proposals on March 18, 2022, for As-Needed Environmental Consulting Services SMART received four (4) proposals on April 12, 2022, and rated them by a qualitative/descriptive (adjectival) method. Based on this rating method SMART concluded that WRA, Inc. was the highest-ranking proposer, with good understanding and approach to environmental permitting and an excellent demonstrated history of providing similar services locally.

The scope of work for the contract may include preparing permit applications, developing mitigation plans, conducting monitoring of mitigation sites, conducting field studies, and related environmental services to support the implementation of projects. Since this is an as-needed contract, individual task orders will be executed for specific work.

Staff recommends approving Resolution No. 2022-21 authorizing the General Manager to execute Contract No. EV-PS-22-001 for As-Needed Environmental Consulting Services with WRA, Inc. for a total not-to-exceed contract amount of \$450,000 and a term of 3 years, with two additional one-year options to extend at \$150,000 per year.

FISCAL IMPACT: Budget for task orders is included in individual project budgets. The contract will span multiple fiscal years and has been accounted for in FY23.

REVIEWED BY: ☐ Finance /s/ ☐ Counsel /s/

Very truly yours,

 /s/
Bill Gamlen, P.E.
Chief Engineer

Attachment(s): Resolution No. 2022-21

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
APPROVING CONTRACT NO. EV-PS-22-001 WITH WRA Inc. FOR AS-NEEDED ENVIRONMENTAL
CONSULTANT SERVICES**

WHEREAS, the Sonoma-Marín Area Rail Transit District (SMART) is in need of assistance with a wide variety of environmental related activities to support the implementation of capital projects and the monitoring of existing mitigation projects; and

WHEREAS, SMART issued a Request for Proposals on March 18, 2022, for professional As-Needed Environmental Consultation Services; and

WHEREAS, SMART received four (4) proposals on April 12, 2022; and

WHEREAS, SMART determined that WRA, Inc. was the highest-ranking proposer; and

WHEREAS, this contract is funded by Federal, State or Local Sales tax; and

NOW, THEREFORE, BE IT RESOLVED THAT THE BOARD OF DIRECTORS OF SMART HEREBY FINDS, DETERMINES, DECLARES, AND ORDERS AS FOLLOWS:

1. The forgoing Recitals are true and correct and are incorporated herein and form a part of this Resolution.
2. Authorize the General Manager to execute Contract No. EV-PS-22-001 with WRA Inc., for an initial contract amount of \$450,000 and a term of 3 years, with two additional one-year options to extend at \$150,000 per year, for a total not-to-exceed contract amount of \$750,000.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 1st day of June 2022, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ATTEST:

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

AGREEMENT FOR CONSULTANT SERVICES

This agreement (“Agreement”), dated as of July 1, 2022 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District (hereinafter “SMART”), and WRA, Inc. (hereinafter “Consultant”).

RECITALS

WHEREAS, Consultant represents that it is a qualified environmental consulting firm experienced with the environmental laws, regulations, and requirements within the State of California; and

WHEREAS, in the judgment of the Board of Directors of SMART or District, it is necessary and desirable to employ the services of Consultant to provide as-needed environmental consulting services on a task-order basis; and

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

AGREEMENT

ARTICLE 1. RECITALS.

Section 1.01 The above Recitals are true and correct.

ARTICLE 2. LIST OF EXHIBITS.

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

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

ARTICLE 3. REQUEST FOR SERVICES.

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

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

ARTICLE 4. SCOPE OF SERVICES.

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

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

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

Section 4.04 Assigned Personnel.

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

Chris Zumwalt, WRA, Inc.
Michelle Tovar, Stantec (Subconsultant)
Sara Castellanos, Stantec (Subconsultant)
Mark Noyes, Stantec (Subconsultant)
Jared Elia, Stantec (Subconsultant)
John Holson, Stantec (Subconsultant)
Robert Stoddard, Stantec (Subconsultant)
Alisa Reynolds, Stantec (Subconsultant)

ARTICLE 5. PAYMENT.

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

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

Section 5.02 Consultant shall be paid in accordance with the rates established in **Exhibit B**; provided, however, that total payments to Consultant shall not exceed \$150,000 for Fiscal Year 2023, \$150,000 for Fiscal Year 2024, and \$150,000 for Fiscal Year 2025, without the prior written approval of SMART. Consultant shall submit its invoices in arrears on a monthly basis in a form approved by the Chief Financial Officer. The invoices shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); (iv) Certified Payroll Reports (if any), (v) DBE and/or SBE participation report, and (vi) copies of receipts for reimbursable materials/expenses, if any. All reimbursable expenses must comply with SMART's Travel Guidelines and must receive prior approval. Consultant's reimbursement for materials/expenses shall not include items already included in Consultant's overhead as may be billed as a part of its labor rates set forth in **Exhibit B**. SMART does not reimburse Consultant for travel time.

Section 5.03 Consultant agrees that 48 CFR Part 31, Contract Cost Principles and Procedures and 2 CFR Part 200 shall be used to determine the allowability of individual terms of cost. Any costs for which payment has been made to the Consultant that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the Consultant to SMART.

Section 5.04 Consultant must submit all invoices on a timely basis, but no later than thirty (30) days from the date the services/charges were incurred. District shall not accept invoices submitted by Consultant after the end of such thirty (30) day period without District pre-approval. Time is of the essence with respect to submission of invoices and failure by Consultant to abide by these requirements may delay or prevent payment of invoices or cause such invoices to be returned to the Consultant unpaid.

ARTICLE 6. TERM OF AGREEMENT.

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

ARTICLE 7. TERMINATION.

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

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

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

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

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

ARTICLE 8. INDEMNIFICATION

Consultant agrees to accept all responsibility for loss or damage to any person or entity, including SMART, and to indemnify, hold harmless, and release SMART, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, to the extent caused

by the Consultant's negligence, recklessness or willful misconduct in its performance or obligations under this Agreement. Consultant agrees to provide a complete defense for any claim or action brought against SMART based upon a claim relating to Consultant's performance or obligations under this Agreement. Consultant's obligations under this Section 8 apply whether or not there is concurrent negligence on SMART's part, but to the extent required by law, excluding liability due to SMART's conduct. SMART shall have the right to select its legal counsel at Consultant's expense, subject to Consultant's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

ARTICLE 9. INSURANCE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 10. PROSECUTION OF WORK.

When work is requested of Consultant by SMART, all due diligence shall be exercised

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

ARTICLE 11. EXTRA OR CHANGED WORK.

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

ARTICLE 12. REPRESENTATIONS OF CONSULTANT.

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

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

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

Consultant agrees to furnish SMART with proof of payment of taxes on these earnings.

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

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

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

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

Section 12.08 Ownership And Disclosure Of Work Product. Any and all work product resulting from this Agreement is commissioned by SMART as a work for hire. SMART shall be considered, for all purposes, the author of the work product and shall have all rights of authorship to the work, including, but not limited to, the exclusive right to use, publish, reproduce, copy and make derivative use of, the work product or otherwise grant others limited

rights to use the work product. To the extent Consultant incorporates into the work product any pre-existing work product owned by Consultant, Consultant hereby acknowledges and agrees that ownership of such work product shall be transferred to SMART. All reports, original drawings, graphics, plans, studies, and other data or documents (“documents”), in whatever form or format, assembled or prepared by Consultant and other agents in connection with this Agreement shall be the property of SMART. SMART shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to SMART all such documents, which have not already been provided to SMART in such form or format, as SMART deems appropriate. Such documents shall be and will remain the property of SMART without restriction or limitation. Consultant may retain copies of the above- described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of SMART.

ARTICLE 13. DEMAND FOR ASSURANCE.

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

ARTICLE 14. ASSIGNMENT AND DELEGATION.

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

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

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

If to SMART Manager:

Sonoma-Marín Area Rail Transit District
Attn: Bill Gamlen
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
bgamlen@sonomamarintrain.org
707-794-3049

If to SMART Billing:

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

If to Consultant:

WRA, Inc.
Attn: Leslie Allen
2169-G E Francisco Blvd.
San Rafael, CA 94901
allen@wra-ca.com
415-259-9910

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 Use of Recycled Paper. SMART requires that all printing jobs produced under this Agreement be printed on recycled content papers. Recycled-content papers are defined as papers containing a minimum of 30 percent postconsumer fiber by weight. All papers used in the performance of a print job for SMART shall be recycled-content paper. The recycle logo or "chasing arrows" cannot be used on printed material unless the paper contains a minimum of 30 percent postconsumer material. If paper meets the 30 percent requirement, ask that the recycling logo be printed on the project.

Section 16.02 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 16.03 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. Consultant and SMART acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and SMART acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

Section 16.04 Prevailing Wages. Contractor and all Subcontractors shall pay to all workers employed not less than the prevailing rate of wages as determined in accordance with the Labor Code as indicated herein.

All Contractors, contractors, and subcontractors doing business with public agencies through the State of California (including SMART) shall comply with applicable labor compliance requirements including, but not limited to prevailing wages, SB 854, Labor Code Sections 1725.5, 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815. Public Works Contractor Registration Programs, Electronic Certified Payroll Records submission to the State Labor Commissioner and other requirements, described at <http://www.dir.ca.gov/Public-Works/Contractors.html>.

Applicable projects are subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

Section 16.05 Licensing Laws. The consultant and all subcontractors shall comply with the provisions of Chapter 9 Division 3 of the Business and Professions code concerning the licensing of contractors. All Contractors shall be licensed in accordance with the laws of the State of California and any Contractor not so licensed is subject to the penalties imposed by such laws. Prior to commencing any work under contract, all Contractors and subcontractors must show that they hold appropriate and current Contractor Licenses in the State of California. The Contractor shall provide such subcontractor information, including the class type, license, number, and expiration date to SMART.

Section 16.06 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 16.07 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 16.08 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 16.09 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 16.10 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 16.11 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 16.12 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

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

CONSULTANT: WRA, INC.

By: _____
Geoff Smick, President and CEO

Date: _____

SONOMA-MARIN AREA RAIL TRANSIT (SMART)

By: _____
Eddy Cumins, General Manager

Date: _____

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

By: _____
Ken Hendricks, Procurement Manager

Date: _____

APPROVED AS TO FORM FOR SMART:

By: _____
District Counsel

Date: _____

EXHIBIT A

SCOPE OF WORK & TIMELINE

I. Overview

The Sonoma-Marín Area Rail Transit District (SMART) is contracting with WRA, Inc. to provide as-needed environmental consulting services to assist with a wide variety of environmental related activities to support the implementation of capital projects and the monitoring of existing mitigation projects.

II. Project Management

All work shall be initiated, scheduled, and reviewed by SMART's Chief Engineer or designee. Work may be initiated in writing or by teleconference.

III. Scope of Work

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

1. Preparing permit applications
2. Developing mitigation plans
3. Preparing monitoring reports for mitigation sites as dictated by permit requirements
4. Evaluating environmental documents
5. Conducting field studies
6. Monitoring mitigation sites
7. Performing cultural resources investigations
8. Preparing environmental review documents
9. Other environmental activities related to the implementation of capital projects and the monitoring of existing mitigation projects.

Written Task Orders will be issued by the SMART Manager to initiate all work. The Task Order will include all work requirements, specifications, deliverables, not-to-exceed amounts, and timelines for completion.

IV. Timeline for Each Requirement / Task

All deliverables and timelines for work will be clearly described in each task order and shall be mutually agreed upon by SMART and Consultant in writing prior to the start of any work being performed.

V. Acceptance Criteria

SMART's Chief Engineer or designee will be responsible for reviewing all work performed to ensure it meets the requirements identified in each task order. Upon the successful completion of the work, SMART's Chief Engineer shall issue a Notice of Acceptance and instruct the Consultant to submit its invoice. If work performed does not meet the requirements of the task order, Consultant shall be required to replace defective work at no cost to SMART. Following the replacement of the defective work, SMART's Chief Engineer will issue a Notice of Acceptance and instruct the Consultant to resubmit its invoice.

EXHIBIT B
SCHEDULE OF RATES

WRA, INC.	
Classification/Category	Total Burdened Labor Rate
Principal/Director	\$267.81
Senior Environmental / Open Space Planner	\$230.10
Senior Restoration Designer	\$210.82
Senior Associate Engineer	\$210.56
Senior Associate / Senior Project Manager	\$190.99
Senior Associate Landscape Architect	\$183.43
GIS Professional II	\$137.94
Associate	\$153.92
Senior Scientist	\$124.82
Scientist	\$120.72
Senior Technician	\$102.20
Landscape Designer	\$99.69
Technician	\$93.53
Clerical Support	\$155.16

Notes:

- Use of a GPS Unit is billed at \$100.00 per day.
- Materials (if any) shall be invoiced to SMART at cost with receipt documentation submitted with the invoice.
- All rates shall be fixed for the initial three-year term. Upon completion of the initial three-year term, and prior to the commencement of the optional terms of this Agreement, Consultant may, upon 30 days written notice to SMART, request an increase in the rates equal to the Consumer Price Index, San Francisco Area, as reported by the Bureau of Labor Statistics, U.S. Department of Labor, using the month of April for the most recent year. The maximum increase shall be 5%.

STANTEC	
Classification/Category	Total Burdened Labor Rate
Principal Biologist / Regulatory	\$240.15
Senior Biologist / Regulatory / Planner	\$138.44
Biologist / Regulatory / Planner	\$124.31
Biologist / Wildlife / Wetlands / Botanical	\$104.54
Environmental Technician	\$90.41
Principal Cultural	\$226.02
Cultural	\$90.41
Technical Editor	\$96.06
GIS Specialist	\$113.01
Safety Administrator	\$118.66
Project Administrator	\$79.11

Notes:

- Use of a Field Vehicle is billed at \$100.00 per day.
- Materials (if any) shall be invoiced to SMART at cost with receipt documentation submitted with the invoice.
- All rates shall be fixed for the initial three-year term. Upon completion of the initial three-year term, and prior to the commencement of the optional terms of this Agreement, Consultant may, upon 30 days written notice to SMART, request an increase in the rates equal to the Consumer Price Index, San Francisco Area, as reported by the Bureau of Labor Statistics, U.S. Department of Labor, using the month of April for the most recent year. The maximum increase shall be 5%.

HANFORD APPLIED RESTORATION & CONSERVATION – LABOR RATES	
Classification/Category	Total Burdened Labor Rate
Project Manager	\$149.33
Superintendent	\$149.33
Landscape Maintenance Laborer**	\$53.86
Foreman	\$101.59
Laborer Group 3	\$73.79
Laborer Group 4	\$66.07
Qualified Applicator	\$101.59
Equipment Operator Group 3	\$101.40
Equipment Operator Group 4	\$99.71
Equipment Operator Group 6	\$96.54
Teamsters Group 2	\$81.85
Teamsters Group 3	\$82.22
Teamsters Group 4	\$82.64

Notes:

- The Labor Classifications above shall comply with the CA DIR established prevailing wage rates.
- Prevailing Wage Classifications are not subject to the request for rate increase following the initial three-year contract term. Rate increases for these classifications are governed by any predetermined increases per CA DIR.
- Travel rate for work between project sites during the same day shall be in accordance with prevailing wages per CA DIR.

HANFORD APPLIED RESTORATION & CONSERVATION - EQUIPMENT	
Equipment Description	Per Unit Per Day
Weed Trimmer, Chainsaw Per Person	\$50.00
High Weed Mower	\$230.00
4WD Tractor	\$690.00
Skid Steer	\$900.00
Flail Mower Skid Steer Attachment	\$560.00
Excavator < 6 TN	\$620.00
Excavator 10 TN	\$760.00
Excavator 20 TN	\$1,110.00
Excavator 40 TN	\$2,230.00
Wheel Loader 3CY	\$1,050.00
Skip Loader	\$500.00
Backhoe	\$640.00
Hydroseeder (3000 GAL)	\$3,600.00
Hydroseeder (1000 GAL)	\$2,410.00
GPS Unit	\$520.00
4 Wheel Drive Pick-Up	\$350.00
ATV/UTV	\$240.00
500-Gal Trailer	\$240.00
5 CY Dump Truck	\$1,010.00
10 CY Dump Truck	\$1,380.00
Transfer Truck	\$1,740.00

Lowbed Haul Truck	\$1,740.00
Water Truck	\$1,010.00

Notes:

- Equipment rate includes equipment indirect costs (fuel, oil, grease, etc.)
- Equipment mobilization/demobilization is not included in the equipment costs and will be calculated separately for each task.
- Cost per mile of travel to/from site (i.e. travel to the project site from Hanford Petaluma operations yard) is charged at mobilization rate to be determined by task depending on the necessary equipment for the work. The Driver of the vehicle and vehicle rate is charged with applicable tolls.

THE WATERSHED NURSERY	
Classification/Category	Total Burdened Labor Rate
Vegetation Biologist	\$129.32

Notes:

- All materials (if any) shall be invoiced to SMART at cost with receipt documentation submitted with the invoice.
- All rates shall be fixed for the initial three-year term. Upon completion of the initial three-year term, and prior to the commencement of the optional terms of this Agreement, Consultant may, upon 30 days written notice to SMART, request an increase in the rates equal to the Consumer Price Index, San Francisco Area, as reported by the Bureau of Labor Statistics, U.S. Department of Labor, using the month of April for the most recent year. The maximum increase shall be 5%.

EXHIBIT C
FTA & DOT REQUIREMENTS

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

1. General.

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

It is the responsibility of the Contractor and its subcontractors to ensure that all clauses included in this Exhibit applicable to the work specified within the Agreement are adhered to by the Contractor and its subcontractors.

2. Access To Records and Reports.

Applicability: All Contracts

Contractor shall comply with the following requirements:

(a) Record Retention. Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-Contracts, leases, subcontracts, arrangements, other third-party Contracts of any type, and supporting materials related to those records.

(b) Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. §200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

(c) Access to Records. The Contractor agrees to provide access to SMART, FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required. Contractor shall also 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.

(d) Access to the Site of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

(e) 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.

3. ADA Access

Applicability: All Construction, Architecture & Engineering, Operations Management, and Rolling Stock Contracts

The contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (d), which states that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The contractor also agrees to comply with all applicable requirements of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

4. Buy America.

Applicability: All Rolling Stock Purchases, Materials and Supplies Contracts, and Construction Contracts >\$150,000.

The Contractor agrees to comply with 49 U.S.C. 5323(j) as amended by MAP-21, 49 U.S.C. 5323(h), 49 C.F.R. Part 661 and FAST Act (Pub. L 114-94), which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a sixty percent (60%) domestic content for FY16 & FY17; sixty-five percent (65%) domestic content for FY18 & FY19; and seventy percent (70%) domestic content for FY20 & beyond.

Contractor shall submit to SMART the appropriate Buy America certification with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

5. Lobbying

Applicability: All Contracts > \$100,000

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 - Contractors who apply or bid for an award of \$100,000 or more shall 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 a Federal 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 certifies to the tier above that it will not and has not taken any action involving the Project or the Underlying Agreement for the Project, including any award, extension, or modification. Each tier shall 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 SMART.

6. Cargo Preference Requirements.

Applicability: All Rolling Stock Purchases, Materials & Supplies, and Construction Contracts which require transportation by ocean vessels.

The Contractor agrees to:

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

(b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph, 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.

7. Charter Service.

Applicability: All Operations & Management Contracts

The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 C.F.R. part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be “incidental”, i.e., it must not interfere with or detract from the provision of mass transportation.

8. Civil Rights.

Applicability: All Contracts

The following Federal Civil Rights laws and regulations apply to the Agreement:

1. **Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:
 - a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
 - b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, “Equal Employment Opportunity,” September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.
2. **Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
3. **Nondiscrimination on the Basis of Age.** The “Age Discrimination Act of 1975,” as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

4. **Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

Civil Rights and Equal Opportunity

The Sonoma-Marín Area Rail Transit District is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with 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, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., 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. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. 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, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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.
3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S.

Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, 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.

4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
5. **Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA.

9. Clean Air Act

Applicability: All Contracts > \$150,000

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401-7671(q) et seq. The Contractor agrees to report each violation to SMART, the FTA, and the Regional Office of the Environmental Protection Agency.

The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the FTA.

10. Clean Water Act

Applicability: All Contracts > \$150,000

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Water Act, as amended, 33 U.S.C. §§ 1251 - 1377 et seq.
- (2) The contractor agrees to report each violation to the SMART and understands and agrees that SMART will, in turn, report each violation as required to assure notification to the FTA, and the appropriate Environmental Protection Agency Regional Office in compliance with the notice of violating facility provisions in section 508 of the Clean Water Act, as amended, 33 U.S.C. 1368.

- (3) The Contractor agrees to protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f-300j-6.
- (4) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.”

11. Conformance with National ITS Architecture

Applicability: All ITS Contracts

Intelligent Transportation Systems (ITS) property and services must comply with the National ITS Architecture and Standards to the extent required by 23 U.S.C Section 517(d) and FTA Notice, “FTA National ITS Architecture Policy on Transit Projects”, 66FR 1455 et seq., January 8, 2001, and later published policies or implementing directives FTA may issue. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture.

12. Contract Work Hours and Safety Standards Act.

Applicability: All Operations Management, Rolling Stock Purchases, and Construction Contracts >\$100,000.

- a. Where applicable (see 40 U.S.C. § 3701 et seq), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.
- b. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of 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.
- c. 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. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in

such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

- (2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. SMART shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

13. Davis Bacon Act and Copeland Anti-Kickback Act

Applicability: All Construction Contracts > \$2,000

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, et seq. and 18 USC 874. The Acts apply to SMART’s construction contracts and subcontracts that “at least partly are financed by a loan of grant from the Federal Government”. 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. Construction for purposes of the Acts, include “actual construction, alteration, and/or repair, including painting and decorating” as defined by 29 CFR 5.5(a).

Contractors and subcontractors at any contract tier agree to comply with the Davis-Bacon Act 40 USC 3141, et seq and implementing DOL regulations “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction” 29 CFR Part 5.

In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

SMART has attached to the Agreement a copy of the current prevailing wage determination issued by the Department of Labor which must be adhered to by the Contractor and all subcontractors. Contractor shall report all suspected or reported violations to the SMART who will intern report all violations to the Federal awarding agency.

“Compliance with the Copeland “Anti-Kickback” Act.

- (1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FTA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

14. Debarment and Suspension

Applicability: All Contracts > \$25,000

- (1) This contract is a covered transaction for purposes of 49 CFR Part 18. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) By signing the Agreement or accepting the Purchase Order, the Contractor certifies as follows:

The certification in this clause is a material representation of fact relied upon by the SMART. If it is later determined that the contractor 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 Contractor agrees to comply with the requirements of 2 CFR 180 throughout the period of this contract.

15. Disadvantaged Business Enterprise (DBE)

Applicability: All Contracts

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as SMART deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).
- (5) Termination of the Contract

The Contractor shall report its DBE participation obtained through race-neutral means through the period of performance with all invoices submitted.

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

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

The Contractor must promptly notify SMART whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE

subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of SMART. In this situation, the prime contractor shall provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time period specified, SMART will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, SMART may issue a termination for default proceeding.

It is the policy of SMART and the United States Department of Transportation (“DOT”) that Disadvantaged Business Enterprises (“DBE’s”), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

16. DHS Seal, Logo, and Flags.

Applicability: All Contracts

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FTA pre-approval.

17. Energy Conservation.

Applicability: All Contracts

The Consultant 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. The consultant agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA funds required under FTA regulations, “Requirements for Energy Assessments,” 49 CFR part 622, subpart C.

18. Federal Changes.

Applicability: All Contracts

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 the Sonoma-Marín Area Rail Transit District and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

19. Fly America.

Applicability: All Contracts

The Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10.131 – 301-10.143, which provide that recipients and sub-recipients of Federal funds and their consultants 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. The Contractor shall submit, if a foreign air carrier was used, 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.

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

Applicability: All Contracts

Incorporation of Federal Transit Administration (FTA) Terms - The provisions within 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 the current FTA Circular 4220 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 Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

21. No Obligation by the Federal Government.

Applicability: All Contracts

The Sonoma-Marín Area Rail Transit District (SMART) and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Agency, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

22. Notice of Legal Matters.

Applicability: All Contracts > \$25,000

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the SMART is located. The Contractor must include a similar notification requirement in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

- (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
- (3) Additional Notice to the U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

23. Patent Rights and Rights in Data and Copyrights Requirements.

Applicability: All Research Project Contracts

Intellectual Property Rights

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the Sonoma-Marín Area Rail Transit District intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT.

The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions:

Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution.

For purposes of this Contract, the term “subject data” means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of “subject data” include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Federal Government Purposes,” any subject data or copyright described below. For “Federal Government Purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.
 - a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
 - b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA’s license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.
6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

24. Pre-Award and Post Delivery Audits Requirements.

Applicability: All Rolling Stock/Turnkey Acquisition Contracts

A Buy America certification under this part shall be issued in addition to any certification which may be required by 49 CFR Part 661. Nothing in this part precludes the FTA from conducting a Buy America investigation under part 661 of this title “Pre-Award and Post-Delivery Audit Requirements”.

The Contractor agrees to comply with “Buy America Requirements-Surface Transportation Assistance Act of 1982, as amended by 49 CFR 661.12, but has been modified to include FTA’s Buy America requirements codified at 49 U.S.C. A 5323(j).

Pre-Award and Post-Delivery Audit Requirements – The Contractor agrees to comply with 49 U.S.C. 5323(I) and FTA’s implementing regulation at 49 CFR Part 663 and to submit the following certifications:

- 1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the firm certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
- 2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the solicitation specifications.
- 3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit a) manufacturer’s FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or b) manufacturer’s certified statement that the contracted buses will not be subject to FMVSS regulations.

25. Recycled Products.

Applicability: All Contracts > \$10,000

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), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. The Contractor agrees to comply with the U.S. Environmental Protection Agency (US EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials”, 40 CFR Part 247.

26. Program Fraud and False or Fraudulent Statements and Related Acts

Applicability: All Contracts

(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.

27. Prompt Payment.

Applicability: All Contracts

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor’s receipt of payment for that work. In addition, the contractor is required to

return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed. The contractor must promptly notify SMART, whenever a DBE subcontractor performing work related to this contract 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.

28. Safe Operation of Motor Vehicles.

Applicability: All Contracts

- (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.

29. Seismic Safety.

Applicability: All A&E and Construction Contracts

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed

by a subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project. The Contractor will facilitate and follow Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. 7704 note, except as the Federal Government determines otherwise in writing.

30. Transit Employee Protective Agreements

Applicability: All Transit Operations Contracts

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator.

- i. General Transit Employee Protective Requirements – To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 CFR Part 215, and any amendments thereto. The requirements of this subsection however do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. 5311. Alternate provisions for those projects are set forth in subsections (B) and (C) of this clause.
- ii. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. 5310(a)(2) for Elderly Individuals and Individuals with Disabilities – If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. 5333(b) are necessary or appropriate for the state and SMART for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. 5333(b), U.S. DOL guidelines at 29 CFR Part 215, and any amendments thereto.
- iii. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. 5311 in Non-Urbanized Areas – If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.
- iv. The Contractor also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance by FTA.

31. Special DOL EEO Clause

Applicability: All Construction Contracts > \$10,000

The contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60- 741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

32. Drug and Alcohol Testing

Applicability: All Transit Operations Service Contracts

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency, or the Sonoma-Marín Area Rail Transit District, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with part 655 before June 30 and to submit the Management Information System (MIS) reports to the Sonoma-Marín Area Rail Transit District. To certify compliance the Contractor shall use the “Substance Abuse Certifications” in the “Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements”, which is published annually in the Federal Registrar.

33. Termination.

Applicability: All Contracts > \$10,000

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 SMART’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 [Breach or Cause]. 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 Contract 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) calendar 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) calendar 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 (Professional or Transit Service Contracts) SMART, by written notice, may terminate this contract, in whole or in part, when it is in SMART's best interest. If this contract is terminated, SMART shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

(f) Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract 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 the Agency.

(g) Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination

specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Agency goods, the Contractor shall, upon direction of the Agency, protect and preserve the goods until surrendered to the Agency or its agent. The Contractor and Agency shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract 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 the Agency.

(h) Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Agency may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Agency resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Agency in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if:

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract.
3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

(i) Termination for Convenience or Default (Architect and Engineering Contracts). SMART may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency 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 the Agency 's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the Agency, the Agency's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

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

If, after termination for failure to fulfill contract 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 Agency.

(j) Termination for Convenience or Default (Cost Type Contracts) The Agency may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of Agency or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Agency, or property supplied to the Contractor by the Agency. If the termination is for default, the Agency may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Agency and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Agency, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a Notice of Termination for Default, the Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

34. Veterans Hiring Preference.

Applicability: All Contracts

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

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

35. Violation and Breach of Contract.

Applicability: All Contracts

Rights and Remedies of SMART

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.

Rights and Remedies of Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by SMART, the Contractor expressly agrees that no default, act or omission of SMART shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless SMART directs Contractor to do so) or to suspend or abandon performance.

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.

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.

Performance during Dispute

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

Claims for Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it 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.

36. Geographic Restrictions.

Applicability: All Contracts

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

37. Metric System.

Applicability: All Contracts

To the extent required by U.S. DOT or FTA, Contractor shall use the metric system of measurement in its project activities pursuant to the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 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, SMART agrees to accept products and services with dimensions expressed in the metric system of measurement.

38. Environmental Protection.

Applicability: All Contracts

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.

39. Privacy Act.

Applicability: All Contracts

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. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. 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.

40. Transit Vehicle Manufacturer (TVM) Certifications

Applicability: All Rolling Stock Contracts

49 CFR 26.49 – Contractor must submit to SMART a certification from each transit vehicle manufacture that desires to bid or propose upon a DOT-assisted transit vehicle procurement that it has complied with the requirements of 49 CFR 26.49. SMART may, however, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the overall goal setting procedures.

41. Federal Tax Liability and Recent Felony Convictions

Applicability: All Contracts

- A. Contractor certifies that it does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that it is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- B. Contractor certifies that it was not convicted of felony criminal violation under any Federal law within the preceding twenty-four (24) months.

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

Applicability: All Research and Development Contracts

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

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

Applicability: All Contracts

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

44. Domestic Preferences for Procurements

Applicability: All Contracts

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

For the purposes of this section:

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



June 1, 2022

David Rabbitt, Chair
Sonoma County Board of Supervisors

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

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
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Patty Garbarino
Golden Gate Bridge,
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Sonoma-Marin Area Rail Transit Board of Directors
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

SUBJECT: Special Giants Game Service

Dear Board Members:

RECOMMENDATIONS:

Approve additional service on June 12 and June 26 to meet the Golden Gate Ferry service from Oracle Park

SUMMARY:

SMART recommends adding service to meet the ferry returning from the Giants game at Oracle Park on Sunday, June 12th and Sunday, June 26th, 2022.

SMART receives many requests for special event service, particularly to the Giants games at Oracle Park. Golden Gate runs a special Giants Ferry service from Larkspur Ferry Terminal for the season. The ferry departs one hour and 30 minutes before the first pitch and drops passengers off at Oracle Park. The ferry departs Oracle 30 minutes after the last out.

The weekend Giants games are 1:05pm, 4:15pm, or 7:15pm. The variation in length of baseball games requires flexibility with return transit services, as the ferry and train must hold for an unknown period of time following the game. Current budgeted SMART staffing levels and labor contracts do not permit the train to hold for the return trips for the 4:15pm and 7:15pm games. However, the 1:05pm game return can be served by the addition of a special train, departing Larkspur at approximately 6:15pm (or 25 minutes after ferry arrival).

The trip to the 1:05pm Giants game can be served with existing southbound 9:31am, getting to Larkspur at 10:50am, with a 45-minute transfer; Golden Gate recommends that passengers arrive 45 minutes prior to the ferry departure.

Staff recommends utilizing our existing fare structure for this pilot service. If demand proves high, it may be helpful to create a separate mechanism to manage ticket sales and generate revenue. In addition, we have the option of adding a third car to the existing 9:31am southbound train, based on demand.

Ticketing for the train and ferry would need to be purchased separately by the rider. Special Giants Ferry tickets (\$15.50 adult one way) must be pre-purchased online and often sell out. SMART riders should use the regular Clipper or Mobile App fares, as the "Rail and Sail" discount will not apply to the special Giants ferry service.

The Giants have offered to do a targeted email to North Bay ticketholders to promote the integrated train-to-ferry service on those days. SMART staff will also market the service to existing and future riders.

SMART and Golden Gate Ferry are excited to be offering this coordinated service to the public, to make traveling to Giants games more convenient and stress-free. North Bay residents will be able to travel car-free from their closest SMART station to the Marina Gate at Oracle Park, avoiding traffic and the hassle of parking (\$50 in stadium area).

FISCAL IMPACT: The addition of a special one-way train from Larkspur to Sonoma County Airport to meet the post-game return ferry would cost SMART an additional \$2,400 in operating cost. This cost would be offset by the amount of fares collected.

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

Very truly yours,

/s/

Emily Betts
Principal Planner