



**BOARD OF DIRECTORS
MEETING AGENDA
June 2, 2021 – 1:30 PM**

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

MEMBERS OF THE PUBLIC MAY NOT ATTEND THIS MEETING IN PERSON

ZOOM TELECONFERENCE INSTRUCTIONS

PUBLIC COMMENT PRIOR TO MEETING:

If you wish to make a comment you are strongly encouraged to please submit your comment by 5:00 p.m. on Tuesday, June 1, 2021 at

<https://www.surveymonkey.com/r/SMARTBoardComments>

PUBLIC COMMENT DURING THE MEETING:

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

1. Call to Order
2. Approval of the May 19, 2021 Board Minutes
3. Board Member Announcements
4. General Manager’s Report
5. Public Comment on Non-Agenda Items
6. Consent Calendar
 - a. Approval of Monthly Financial Reports
 - b. Approval of Resolutions Authorizing the General Manager to Execute Change Orders CO-014 to Contract No. CV-DB-18-001 and CO-003 to Contract No. SYS-DB-18-001 that modifies the Contract provisions while the Windsor Extension work is temporary suspended until the Regional Measure 3 (RM3) funding is allocated

Consent Calendar Con't

- c. Approval of a Resolution Authorizing the General Manager to Negotiate Final Terms and Enter into an Interagency Coordination Agreement Supporting Operations of the Sonoma-Marin Bike Share Pilot Program

Regular Calendar

7. Approval of Resolutions Adopting the Fiscal Year 2021-22 Budget, Annual Appropriation Limit and Investment Policy
8. Authorize the General Manager to Award Service Agreement No. OP-SV-21-002 with Empire Cleaners for laundry, dry cleaning and pressing services for SMART-owned employee uniforms in the amount of \$180,000
9. Authorize the General Manager to Award Contract No. OP-PS-21-002 with Portola Systems Inc. for ongoing management and maintenance support for the existing SMART Station Network for an initial term of three years with a total not-to-exceed amount of \$722,460
10. Authorize the General Manager to execute Contract Amendment No. 1 with Hogan Lovells, LLP in the amount not to exceed \$350,000 for specialized legal services
11. Approval of a Resolution Adopting a Continuing Disclosure Policy
12. Listening Forum Action Summaries (*Discussion*)
13. Next Regular Meeting of the Board of Directors, June 16, 2021 – 1:30 PM
14. Adjournment

DISABLED ACCOMODATIONS:

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



**BOARD OF DIRECTORS
REGULAR MEETING MINUTES
May 19, 2021 - 1:30 PM**

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

MEMBERS OF THE PUBLIC MAY NOT ATTEND THIS MEETING IN PERSON

1. Call to Order

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

2. Approval of the May 5, 2021 Board Minutes

MOTION: Director Connolly moved approval of May 5, 2021 Board Minutes as presented. Director Lucan second. The motion carried 9-0 (Directors Arnold and Rogers joined later; Director Gorin absent).

3. Board Members Announcements

None

4. General Manager's Report

General Manager Mansourian reported that since the start of passenger service in August 2017, SMART has carried 1,977,000 passengers, 206,000 bicycles, and over 7,300 wheelchairs.

He stated that consent agenda items 6b and 6c are regarding the General Manager salary and the recruiting firm. Should the Board decide to hire the recruiting firm today, they will be interviewing various people and putting a profile together, so this is just a first step.

Lastly, General Manager Mansourian mentioned that Caltrans announced that they have selected three projects in the entire State of California for States official submittal for a federal grant project that has \$1 billion funds two projects are in Southern California, and

the third one is SMART's Windsor Extension project. This program was called TIGER under President Obama, BUILD under President Trump, and now under President Biden the program is called RAISE. We are very grateful that the State of California picked the Windsor Extension project submittal for federal funding for the project.

Chair Rabbitt stated great news.

Director Fudge asked how much would SMART be eligible for and the timeframe. General Manager Mansourian responded that grant the State has a limit to receive \$100M. The grant application due on July 12 and selected projects will be announced at end of year. Ms. Parker has been actively working on the grant.

Chair Rabbitt stated that as General Manager Mansourian said, there are two items on the consent calendar regarding the General Manager recruitment. The intention is to make sure that we have an inclusive transparent process, and it is built in the budget for the search firm to conduct community and stakeholder meetings, and to make sure that we review thoroughly the applications that are received. Meetings with individual board members will take place to understand what is needed going forward, and of course it is all really, at the end of the day, dependent upon who answers the call. Also, SMART did not have a salary range for the General Manager, which is something that was unique in that we had a contract. It is important to have a range that we could attract candidates.

Lastly, he is very excited about agenda item 6d, SMART being the transit sponsor for sustainable communities grant again. We were successful with the project in Roseland and we hope to be successful with the project in Petaluma. These are good grants in terms of the dollar amounts and we have a great argument why the Petaluma site should be selected. In response to the comments of the Petaluma site land use process is entirely up to the City of Petaluma including all the traffic concerns and everything else. He repeated that that site was originally intended to be a rail site long before SMART was even formed.

5. Public Comment on Non-Agenda Items

Rick Luttmann stated that on the meeting of January 20th, staff publicize the list of seven topics that were going to be addressed during the first part of this year and the last one was freight. He is very bullish on using rail to transport freight; however, it is within SMART purview to have freight. There are a lot of trucks on the highway moving goods and there are at least two major advantages to getting trucks off the highway; 1) they're dangerous; and 2) they emit a lot of greenhouse gases. He urges staff to think about going into the freight business all the way to the North side of Willits where there is a business mark.

Mike Arnold stated that he sent an email to a few of the board members because this morning a PDF file that was posted on the website as part of the meeting; It was the new schedule effective May 24th or next Monday, however, agenda item number nine says update on schedule followed by the word discussion, which means under the Brown Act that the Board cannot take any action. On agenda item number 8 on the Budget, there is a discussion of an increase in service, it doesn't say when, but does say that it's included in

the budget. He asked for clarification and if the General Manager has the power to increase the operating expenses of the Agency for next year prior to the budget being adopted or was this just a matter of labeling of the item that was posted did not have the appropriate caveat on it. In operating expenses for this purpose would it not be prudent for the Board to know how much it's going to cost and what the impact on ridership will be?

Director Arnold joined at 1:37pm

Duane Bellinger thanked the General Manager Mansourian for including the parking lot income in the budget. He addressed his concern regarding the agenda items on the consent calendar. The process is to decide and pass it on without asking the public primarily 6b, the hiring of a new general manager. He has seen the city of Petaluma and school boards ask the public as to what kind of a person they want to run the organization. He suggested to the Board to have a discussion of the criteria for the new general manager. He supports item 6d and asked the Board to have a full public discussion as to the effects on the future of SMART regarding the Corona Station property. The City of Petaluma may have hearings to discuss what is best for the City, and SMART should have public hearings as to what is best for SMART.

Warren Wells stated that Ms. Weaver has addressed to the Board the lack of way finding along the SMART pathway. While there is an overall map of the pathway, however, the map can be difficult to find their ways in several sections of the pathway. Ms. Weaver addressed sections of the pathway in her videos between Novato and Petaluma. He offered any assistance needed by SMART to identify and help people use the pathway.

Eris Weaver stated she read the staff report regarding the recruitment process for the new general manager and so a couple faces were referred to potential interviews with other stakeholders. She asked who was going to be included and if anyone representing the bicycling community would be included in that. She announced that May is bike month, and a few things are happening this week, one is commemorating and other is celebrations. The horrific injury of two cyclists by a drunk driver in Sebastopol last week just points out the need for more route like the SMART path to allow folks to ride, without having to share the road with cars. Tonight, is an international event called the ride of silence, which is a rolling memorial to cyclists who have been killed on road. There are three different rides this evening starting at 7pm in Santa Rosa, Petaluma, and Sonoma Valley. There are approximately 100 people signed up to participate in those rides this evening. Friday is bike to workday, there will be several energizer stations around, where people can get their swag bags and general encouragement for cycling. Also, bike shops throughout the county are going to also be handing stuff out, and there will be having a happy hour afterwards and encourage any of you to join us at either tonight's events or on Friday.

Chair Rabbitt acknowledged the written public comments received and emailed.

Director Connolly stated that he and a few others will be biking from the Golden Gate Bridge to Marin Civic Center just keeping that bike to workday tradition alive. He will be taking a

bus from the San Rafael Transit Center to the Golden Gate Bridge and riding back and he extended the invitation.

Chair Rabbitt thanked Director Connolly for putting that out there. He apologized to the General Manager Mansourian for skipping the general managers' report on the agenda, and we will go to the section next.

6. Consent
 - a. Accept Monthly Ridership Report – April 2021
 - b. Adopt a Resolution to Amend the Budgeted Administrative Salary Ranges to Create a Range for the Position of General Manager
 - c. Authorize the General Manager to Execute Contract No. HR-PS-21-004 with KL2 Connects LLC to provide executive recruitment services for the position of General Manager with a maximum not-to-exceed amount of \$48,450
 - d. Approve a Resolution Authorizing the Submittal of an Affordable Housing Sustainable Communities grant to the State of California Strategic Growth Council and Department of Housing and Community Development to construct the SMART Pathway crossing of McDowell Boulevard and the SMART second Petaluma Station at Corona Road

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

MOTION: Director Garbarino moved approval of the Consent Agenda as presented. Director Pahre second. The motion carried 10-0 (Director Rogers joined later; Director Gorin absent).

7. Authorize the General Manager to Execute Contract Amendment No. 1 in the amount of \$158,075 to the existing Consultant Services contract with Civic Edge Consulting for marketing support services for a total not-to-exceed amount of \$258,050

Acting Communications and Marketing Manager, Matt Stevens stated that the item before the Board today is to authorize the General Manager to execute Contract Amendment No. 1 with Civic Edge Consulting in an amount of \$158,075.

Civic Edge has been very instrumental in helping SMART build a strong social marketing program the last five months engaging a broad spectrum of the North Bay. They have shared SMART's positive impact on the economy, environment, and quality of life. This contract amendment will support SMART's outreach and marketing efforts to regain its pre-pandemic ridership and to attract new riders beginning with Memorial Day Weekend promotions and continuing through Labor Day, to build SMART's ridership and overall public awareness of the benefits that SMART brings to the North Bay.

Comments

Director Arnold asked what the goal of the contract is? Mr. Stevens responded that the goal of the contract is to support marketing and welcome back campaign over the next few months. Director Arnold stated that its great to get back in the campaign mode.

Director Connolly stated he is supportive; however, it seems like a big expenditure, and he would be interested in a little more detail about the strategy and specific action plan going forward. He said that Director Colin has expertise in this area and would like to hear her perspective.

Director Colin stated that the original contract started prior to her being on the Board and the amount of the amendment is a significant amount of money. She said if SMART wants to have a strategic campaign there needs to be more consideration of what is needed over short, medium, and long term. If in the beginning, we want to first get riders back in and maybe we expand beyond that group. Knowing what it is we want to have as a result from the outreach and if there are metrics that can tie into that. She has concerns about this, and it has nothing to a Civic Edge, they are excellent at what they do. She is having a hard time understanding how more likes on Twitter will result in getting people back on the train. She is concerned that we will not get our bang for the buck again not because they are not a great firm, but because we have not been specific enough about each aspect of the outreach or if you are going to make it a campaign to do. She said this is an area she worked a lot in, and does understand that public sector marketing, and private sector are different, but believe that we can apply some of that private sector knowledge to public sector to have success. She is not confident that what has been proposed will do what we want it to do.

General Manager Mansourian stated that the Community Outreach department will be a staff of one person in two weeks. SMART started with 4 and the third person is leaving. Staff does not have the expertise in house and Mr. Stevens is the only staff member left in the department. Staff needs expert help and they have assisted SMART in getting the message out. We need to do print media, radio, television, and social media. The firm has demonstrated expertise to get our word out. Agenda item 9 is how do we convince passenger that we are opening, that its safe affordable and reliable to ride SMART. Again, with a staff of one and things progressing very fast staff needs expert help and this firm has done a very good job.

Director Lucan stated that not directly related to the approval we are making today but kind of longer term what looking out into the future. He suggested comparing SMART's marketing and outreach cost to other transit agencies. This looks like a big dollar amount, but I think in the grand scheme of things it is small. As an agency, we should be spending even more to get the word out and he understands that right now it is a very difficult time, however what is that amount SMART should be spending, if you look at every transportation related business out there in the private sector, whether it is Uber's, Lyft's, airlines how much money they spend out of their budget to encourage people to use their modes of transportation. He thinks public sector transit tends to be very low end of the list. Is there something that could be done to really promote SMART as a better form of transportation and getting around. We are a very young transit agency, and we need to continue to invest in ways to get the word out.

Chair Rabbitt stated that we are in for an interactive process coming out of a pandemic, no one knows what the message is going to be to get people back on the train. In his experience at MTC and Commissioner Connolly could probably reiterate, they are going to be spending an awful lot of money. He talked to the General Manager of BART who thinks it may be years before they get to pre pandemic numbers, they do not know what that message is would be. He appreciates Director Colin expertise and as he does with the consultants of the firm. We cannot sit by, at the same time, things are right now starting to turn, and he thinks we need to be prepared to capture and inform the public. We need to have the bodies in place to be able to get at least that message out, and then we can continue to add to it as we go forward.

Sheila Baker said she is looking forward for additional train service where she can get to and from her medical appointments via SMART train. Working on getting back to more service is going to make SMART stronger and the best.

Richard Brand stated that he appreciates Directors Connolly discussing this issue. He suggested that staff reach out to the Citizen's Oversight Committee members who could review some of the materials of what is needed and to educate the public and get people back on the train.

Director Colin stated she understands the timing of this contract, however fast and quality do not always go together, it would be worth taking the time to get it right. Climbing out of the pandemic is going to take some time and having a strong strategy to do it seems like the best way to go. She recognizes that Mr. Stevens is the only staff left and thanked him for all his work, she recognizes an outside agency is needed, but she will be voting No on this item.

MOTION: Director Lucan moved Authorize the General Manager to Execute Contact Amendment No. 1 in the amount of \$158,075 to the existing Consultant Services contract with Civic Edge Consulting for marketing support services for a total not-to-exceed amount of \$258,050 as presented. Director Hillmer second. The motion carried 9-1 (Director Colin No vote; Director Rogers joined later; Directors Gorin absent).

8. Fiscal Year 2022 Draft Budget (*Discussion*)

Chief Financial Officer, Heather McKillop thanked the Board for giving staff the opportunity to present the draft fiscal year 2022 budget. The last couple of years have been challenging, not only from revenue perspective and predictability, but also from a service perspective. What is it going to look like coming out of the pandemic, how do we get writers back on and so that is what this budget is going to address from a financial perspective. How can we get the funding available so that the Board and the General Manager can take the appropriate actions to try to get service returned and riders back on our system. She provided an overview of the following:

Fiscal Year 2021-22 Draft Budget
Fiscal Year 2022 Budget Components

- Revenue
- Expenditures
- Carryforward
- Reserves

Budget Report: Overview of all Sources and Uses Chart – moving the budget toward the Government Finance Officer Excellent program which has requirements and represent best practices. The chart has the following:

- FY 2019-20 – Final Actuals
 - Budgeted Revenue
 - Debt Service
 - Budgeted Expenditures
 - Restrict Fund Balances
- FY 2020-21 – Approved Amended Budget Plus Adjustments
 - Budgeted Revenue
 - Debt Service
 - Budgeted Expenditures
 - Restrict Fund Balances
- FY 2021-22 – Proposed Budget
 - Budgeted Revenue
 - Debt Service
 - Budgeted Expenditures
 - Restrict Fund Balances

Director Rogers joined at 2:21pm

Revenue Sources

- Sales Tax
 - Largest funding source (77%)
 - Estimated to generate \$42 million in FY 22
 - Expires in FY 29
- State Grants
 - 2nd largest funding source (12%)
 - 4 programs are reoccurring formula funds
 - Others funds available on application / project specific basis
- Federal Funds
 - 3rd largest funding source (7%)
 - 5307 funds, Quick Strike, and Federal Railroad Administration Suicide prevention grant
- Fare Revenues
 - Expected to increase and double from FY 21 estimate but still be less than pre-pandemic levels
 - Current estimate is a return to pre-pandemic levels by FY 2024
 - Dependent on ridership & fare revenue policy
- COVID-19 Relief Funds
 - Received \$14.9 million of CARES Act funds

- Received \$1.8 million of CRRSAA funds
- American Rescue Plan Act (ARPA)
- Expenditures – Operations
- Includes funding and personnel for “6-1-6” schedule and weekend service
- Does not include funds to return to pre-pandemic service levels
- Have estimated we need an additional \$2.2 million for increased service beyond “6-1-6” schedule
- Salaries and benefits is most of the cost (72%)
- Included \$2.9 million for capital equipment and capital repairs as outlined in the capital plan

Expenditures – Administration

- Included costs for litigation and “Welcome Back” campaign
- Included for 1 new position (purchasing assistant)
- Included costs for performance measures (\$195,000)
- Capital funds for information technology
- Debt Service - \$14.9 million in FY 22; \$3 million less than prior FY 22 amount due to refinancing

Expenditures – Capital

- Implementation of Capital Plan adopted by Board April 2021
- \$5,500,000 towards design and permitting of pathway projects
- Match for the Quick Strike grant for Payran to Lakeville pathway project
- Design and Permitting funds for two timber bridges

Carry Forward Funds/Expenditures

- Projects or programs not completed or spent in FY 21
- Projected to be \$10.2 million (Includes almost \$6 million from freight budget that was not expended)
- Will change once year end information is known
- Will be updated in FY 22 amended budget after the financial audit is completed and actual numbers are known

Reserves and Estimated Fund Balance

- Pension Liability Reserve— Contributing \$500,000 in FY 22. Balance will be \$3,574,676
- Equipment Reserve— Not contributing anything additional in FY 22. Balance is \$7,625,000. Will be drawn down over time to fund Capital Plan.
- Corridor Completion Reserve— Not contributing anything additional in FY 22. Balance is \$7,000,000. Will be drawn down over time to fund Capital Plan.
- Operating Reserve—Current policy is 25% of operations or minimum of \$10 million.

Lastly, if you add all the reserves together is approximately \$29.5 million so right around \$30 million. If you add that to the estimate that we have, we are going to end the year within fiscal year 2021 still an estimate which is about \$37.8 million for a total of \$67M

that has been set aside to fund the future capital plan and the future operations.

We have been asked from the public several times why you have \$67 million in the bank. She explained that between the estimated fund balance that we have and the amount of money in the reserves that totals over \$67 million. We will need to have money coming in monthly to be able to pay our regular bills, assuming that money will be set aside in reserve. Over the next several years, as we talked about the Capital Plan, that balance will be drawn down through finishing the design permitting and the construction and match on those projects that we talked about being funded in the Capital Plan.

We were also asked regarding the recession and if the budget had built in any assumptions. We have asked our financial advisors that provide forecasting services for Muni services. They said they could look at recession scenarios which they did for us and said, if we wanted to build in recession their recommendation would be to do so in fiscal year 2031-32, that would be a normal cycle assuming that fiscal year 2021 was a recessionary type of period which they are counting as so with that we'll be looking at that for future short range transit plans. That will be upcoming and have that conversation as part of that, but would not impact at this time, unless we have different news going forward but does not look like it would impact fiscal year 22 at all, as we are estimating that sales tax revenue will be strong moving forward.

Comment

Chair Rabbitt thanked Ms. McKillop for a thorough presentation.

Director Rogers thanked Ms. McKillop for following up on the questions regarding building in the different economic cycles and what we are seeing in other jurisdictions that we're serving on. He appreciates all the work that she put into this.

Director Fudge thanked Ms. McKillop for the excellent presentation, she made things very clear in her presentation. She said she had questions in the staff report, but the presentation addressed her questions. She appreciated Ms. McKillop taking the time to read the public comments and answer those question throughout her presentation.

Director Lucan asked for cost clarification on the proposed budget line 19 (Services and Supplies) and in the explanation column mentions fuel increase and other stuff. He knows that is a big bucket and is the primary driver for that increases in insurance and legal expenses and not necessarily fuel, even though it will be going up since more trains will be running. Ms. McKillop responded yes, it is the difference in litigation cost, welcome back campaign, performance matrix and fuel cost increase. The fuel cost increased from \$905k to \$1.2M and the cost of fuel is increasing. Director Lucan asked for the most part SMART knows what fuel usage is being used and how do we manage that. Ms. McKillop responded that SMART does not hedge from a prospective of buying fuel, however SMART does have a contract and it does float daily so SMART is subject to those daily floats. The good part of it is that SMART is not always required to purchase a certain amount of fuel. She said that SMART is subject to higher prices at any given

time and over a long period of time SMART will come out even as if a hedge had been purchased.

Director Lucan asked if SMART was successful with the RAISE program for the Windsor Extension project what would potentially happen to the RM 3 funds should they get resolved. General Manager Mansourian responded that SMART's culture is never to lose grant funds. The RAISE grant program is a backup to another backup. Should the California Supreme Court rules against RM 3 funds the RAISE funds will be used to complete the Windsor Extension project. Should RM 3 funds be successful the grant is being written to have the flexibility to keep going North. The State of California Rail Master Plan addresses the corridor from Cloverdale to Suisun (Fairfield) and those are the two ends where SMART wants to end up, and we will be very flexible in writing the grant.

Vice Chair Pahre thanked Ms. McKillop for being very clear discussing and explaining the reserves. Until we are clear about the reserves and the decisions that we have been made that those reserves always look like it is extra money that should be spending someplace else. She appreciates the pension liability reserve information and hopes that the \$500k keeps the pension liability reserve solid.

Chair Rabbitt thanked Ms. McKillop for her presentation and explanation regarding fuel cost. He asked if there is any insight and this might not be a specific budget discussion but on the railroad liability insurance, SMART being a new system with Positive Train Control and brand new tracks would receive every benefit and get the lowest possible price. He is curious if they look at it from that standpoint or is it strictly several miles ridership or some other criteria that comes into play.

Ms. McKillop responded that they are a variety of things to go into play, one of the biggest issues is the ensures just do not exist anymore, and it is very hard to find and insurer. The two main places that you get these additional layers of rail liability insurance right now are Bermuda and Lloyds of London and it is very expensive and you must do it in multiple layers. It is not exactly that we have had a bad track record, or that we have do not have a good Positive Train Control system or any of the safety features it's more the insurance industry and what's available for commuter rail and railroad facilities. SMART's insurance broker this year did a very good job on the outlook was very pessimistic as to be able to even get all the layers that we needed to comply. APTA has had conversations on a national level, of how they can assist both freight and commuter rail providers in that area of rail liability insurance and is there anything they can do legislatively to assist in that, so there are conversations going on at the national level. Chair Rabbitt thanked Ms. McKillop for the explanation, for those who serve on the Golden Gate Bridge the Maritime insurance is hard to find and cost is going up annually. He appreciates the answers into looking into a recession in the future. He suggested reviewing the reserves on a regular basis to make adequate adjustments going forward as well as the debt policies, which are both things that he brought to the Board of Supervisors about 10 years ago.

Dani Sheehan thanked Ms. McKillop for a great presentation. She supports Director Colin's comments regarding the marketing contract and to point out a budgetary savings. She is very interested in the campaign ongoing. In the big picture that is a very small item and supports it.

Patrick Seidler thanked the Board and staff for the work they are doing on these projects, most particularly reviewing the capital improvement project. In the April 23rd Press Release is noted in the third paragraph which reads recommendations in the capital improvement program include two rail projects and advancing all remaining pathway projects to shovel-ready status. However, it should read advancing all remaining pathways segments in the 2006 Environmental Impact Report to shovel ready status because Measure Q required a pathway alongside the rail from Larkspur to Cloverdale. He stated that there continues to be a fundamental misunderstanding between what was environmentally cleared in 2006 and what was required to be built in Measure Q in 2008 and he would suggest to Chair Rabbitt having a sidebar conversation to review all the materials. He suggested that SMART remove fences on lease properties in Larkspur and Corte Madera.

Duane Bellinger suggested conducting a survey with the park-n-ride people to find out when they are returning and how many are returning.

Eris Weaver thanked Ms. McKillop for a very detail staff report and budget presentation. It was very understandable compared to previous budget and it moves forward with the request from the public to have greater transparency and communication from the organization.

Director Hillmer thanked Ms. McKillop for a clear and detailed presentation.

9. Update on Schedule, Weekend Service and Fare Incentives (*Discussion*)

Chair Rabbitt stated that few weeks ago we had a very salvatory day in terms of the Capital Improvement projects. Today is kind of another since we will receive an update on the weekday and weekend service schedule and fare incentives. We all have been waiting for when SMART can start running more trains and bringing passengers back in mass and starting that process. We are in a much better place with the pandemic, and we continue moving forward.

General Manager Mansourian stated that staff is very ecstatic in providing this discussion item with suggestions and ideas. When the board started conducting listening sessions, staff took those comments seriously, and after each session the audio, comments and summary notes were posted on SMART's website. Staff started working on looking for common denominators whether you are in San Rafael or Cloverdale, and we heard from people wanting more trains during the morning and evening, more connections to the transit, first and last mile connections and then they wanted better and different fare.

The counties of Marin and Sonoma, and San Francisco are beginning to open in various times, and we have noticed a very strong improvement in ridership. Highway 101 has traffic congestion going southbound by Highway 37 and northbound whether it's a weekday or a weekend traffic backs up to Novato. There is a continuous ridership increase, however we are not near before pandemic, but we see a complete pattern. Staff has been coordinating with County Offices of Education in Marin and Sonoma and we prepared a survey and the school Superintendents distributed and the results are very positive, as you see some of these answers you might want to take a note.

The next item, staff reached out to a wide audience whether they are riding SMART or never taken SMART asking their thoughts if they would ride SMART again or what will it take for them to ride SMART. In the world of transit, there are two schools of thought; 1) keep minimum service and wait till everything opens and if passengers return, then you start increasing the service; and 2) your board has recently decided to spend over \$100M in extensions which includes the pathways connecting to stations, the Sonoma pathways, and the Windsor Extension. It does not make sense for SMART to spend \$100M dollars in extension, but then the train service be at minimal, especially since the most expensive part of train services is Labor which is about 70% and we have kept staff employed. People are starting to make their summer, fall and winter plans and we have received various emails from schools and from variety of businesses, asking about schedule since schools will open in August this year, and businesses are thinking to come back in September, they are all trying to figure out whether SMART can be part of their transportation so running on a minimum service which we are doing today will surely defeat that.

We need to demonstrate that staff has been listening to the comments of the listening sessions in our focus groups and in our surveys and that is why your Board decided to spend funds on the pathways connecting the stations and increasing the service on weekday on weekends.

Today, staff will be presenting two surveys that were conducted: 1) SMART School Survey and 2) SMART Schedule Improvement Survey. The Operations Manager, Marc Bader, will provide recommendation on increasing the operation and frequency of the service. Lastly, the Chief Financial Officer, Heather McKillop will provide an overview of SMART fares on how to make them affordable and what programs are available to use or should have.

General Manager Mansourian provided an overview presentation of the following:

SMART School Survey

- The Survey Was open from April 5th through May 5, 2021 and received 236 responses.
- The Marin County Office of Education distributed the survey via email to their staff to provide insight on commute patterns and how we could adjust our service and schedule to meet the needs of the community.
- Before the pandemic, did you commute on SMART?

- What are the most important factors in your decision to ride SMART?
- Whether you currently ride SMART or not which of these options would increase your likelihood of riding the train?
- The Transportation Authority of Marin's Emergency Ride Home program will reimburse ride home in cases of emergency for anyone who works in Marin County and uses an alternative transportation option, such as carpooling, van pooling, public transit, bicycling and walking. Would this program increase your interest in commuting on SMART?
- SMART is partnering with the Transportation Authorities in Marin and Sonoma to build a system of 300 shared electric bikes near SMART stations to increase access to other transit and destinations. Would this program increase your interest in commuting on SMART?
- SMART offers a 50% fare discount for low income riders through the Clipper START program. Would this program increase your interest in traveling on SMART?
- Will you ride the SMART train on the weekends?

SMART Schedule Improvement Survey

- SMART conducted this survey in May to assess new travel patterns as COVID-19 restrictions ease in the North Bay
- The information collected was used to understand how we could adjust our service and schedule to meet the needs of the community
- This survey was open from May 10, 2021 through May 16, 2021 and received 1,124 responses
- Before the pandemic (COVID-19) did you ride SMART?
- As shelter in place orders ease, how often will you ride SMART?
- What are the most important factors in your decision to ride SMART?
- Which of these options would increase your likelihood of riding the train?
- SMART is considering increasing the number of trains that run each weekday? When would additional trains runs best serve your travel needs?
- Will you ride the SMART Train on the weekends?
- Which weekend day are you more likely to ride SMART?

General Manager Mansourian stated that staff took all the information from the surveys, listening sessions for the Board and public discussion. The Capital Plan addressed the pathway and we are moving in the right direction. Operations Manager, Marc Bader will share the proposed schedule for weekday and weekend, our staff is prepared to start as early as next Monday, and for Memorial Day weekend.

Mr. Bader stated that the [SMART train schedule](#) is the result of the comments received from the listening sessions, survey results, and input from our customer service people, they want more service, this is the key to get people back on the train and increase ridership.

At the request of the General Manager Mansourian, staff started looking at where we could increase service living within the confines of our existing headcount. We are not

increasing the headcount on the engineering side or adding any bodies to the pool we are merely creating some extra round trips of their existing. Highlights are as follows:

- two additional trains in the morning service; 8:14am and 9:18am southbound departures out of Airport Station
- three additional train in the evening service; 3:57pm, 5:33pm and 6:37pm southbound departures our of Airport Station
- two additional train in the morning service; 9:50am and 10:54am northbound departures out of Larkspur Station
- three additional train in the evening service: 5:33pm, 7:09pm and 8:29pm northbound departures out of Larkspur Station

The goal was to maintain the previous schedule, so that riders who were riding the trains before and were familiar with the times and we could accommodate those back into their work schedules, so all the time slots that we're running today match to our 38 train schedule. Operation staff was tasked to review the schedule to restore weekend service within the confines of our existing headcount. After evaluation we were able to provide five round trips on Saturday and Sunday, plus one additional trip, which is the southbound departure out of Airport Station and northbound departure out of Larkspur. The results for our Saturday service will run a train every two hours, starting at 7:35am out of Airports Station through 5:35pm. The northbound return trip starts at Larkspur at 9:34am with the last train on Saturday at 7:34pm. At this time, we are only able to run a Saturday service since we do not have the staff available to accomplish that accomplish what? Sunday service? and keep within the hours-of-service requirements for the Engineer-Conductors.

General Manager Mansourian stated that the plan is to recruit additional Engineer-Conductor that the budget has prepared for us we are also coordinating with our partner, a Golden Gate Bridge and coordinating the Ferry schedule and we are hoping that by the time that Larkspur Ferry opens on weekends, then we will be in a position to start the Sunday. As other transit agencies in Sonoma and Marin County are increasing their service. We have to adjust our schedule to make sure that the connections between various bus, train and ferry services remain optimum and we have to make those adjustments, as our partners, come up with their schedule. It is going to be an ongoing process until our transit agencies are back in their full schedule.

Chief Financial Officer, Heather McKillop provided an overview of the following:

Proposed Fare Changes

- FY 2022 Fare Presentation
 - Current Fare Amount
 - Proposed Promotional Fare Amount
 - Weekend Pass
 - Benefits
 - Next Steps

- Current Fare Amount
 - Individual Fares - Adult
 - \$3.50 base fare for 1 zone
 - \$2.00 for each additional zone
 - \$23.00 daily maximum
 - Senior, youth, low-income, and passengers with disabilities - 50% discount from adult fare
 - 31-Day Pass
 - \$200.00 for Adults
 - \$100.00 for Seniors, youth, low-income, and passengers with disabilities
 - Available on Clipper
 - Eco-Pass
 - Designed for Employers, Colleges, and Veteran's Groups
 - Prices based on number of passes purchased
- Proposed Promotional Fares
 - Individual Fares - Adult
 - \$1.50 base fare for 1 zone
 - \$1.50 for each additional zone
 - \$15.00 daily maximum
 - Senior, youth, low-income, and passengers with disabilities - 50% discount from adult fare
 - 31-Day Pass
 - \$135.00 for Adults
 - \$67.50 for Seniors, youth, low income, and passengers with disabilities
 - Eliminate Eco-Pass and move to 31-day pass
 - Weekend Day Pass
 - Currently only available on Saturday
 - Flat rate pass good for unlimited trips for the day regardless of distance traveled
 - \$10 for each adult
 - \$5 for each senior, youth, low income, and passenger with disabilities
- Benefits
 - Easy to Understand and implement
 - \$1.50 base fare and \$1.50 each additional zone
 - Consistent with local transit transfer agreements and makes transfers simple - \$1.50
 - Significant discount (over 40%)
 - Weekday - Keeps distance-based cost differential in place – pay more for longer trips
 - Keeps the daily accumulator in place (Now \$15 max per day vs \$23 max per day)
- Implementation
 - Clipper Card
 - Individual trips
 - Daily accumulator
 - Monthly passes

- Masabi App (aka SMART E-Ticket)
 - Individual trips
 - Special Promotions – Such as Rail & Sail
- Timing
 - Clipper can't implement changes until September 1, 2021
 - Masabi can implement by June 5th
 - Individual trips
 - Weekend Pass
 - No monthly pass
- Implement the following on Masabi app now
 - Individual trips
 - Weekend Day Pass
- Clipper will be implemented in September
 - Individual trips
 - Daily accumulator
 - Monthly pass
- Customers will need to purchase their tickets on Masabi instead of using their Clipper card until September 1st
- Weekend Pass will continue to be purchased on Masabi app as special promotional ticket even after September 1st
- Will have to make accommodations for discounted low-income tickets on the Masabi app
- New Individual Trip Fares - Goes into effect on Monday, May 24th
- Weekend Day Pass - Goes into effect on Saturday, June 5th
- New Weekday Individual Trip Fares and Monthly Fares on Clipper - Goes into effect on September 1st
- Propose 12-month promotional period June 1, 2021 – May 31, 2022
- Estimated fare revenue for FY 22 is \$1.3 million
 - Revised fare revenue estimate for FY 22 with fare reductions is \$800,000
 - This is a difference of \$500,000 which would come from the \$5 million set aside in the capital plan for these initiatives

General Manager Mansourian stated that the final presentation is “Welcome Back Campaign”. Highlights are as follows:

Welcome Back Campaign

- Step 1: Increase Weekday Train Trips
- Step 2: Resume Saturday Train Service
- Step 3: Introduce Promotional Reduced Fares
- Step 4: COVID Preventive Measures
- Step 5: Require Mask – Following TSA Guidelines
- Step 6: Contactless Payments
- Step 7: Healthy Workforce
- Step 8: Safety Signage
- Step 9: Community Outreach
- Step 10: Customer Service

General Manager Mansourian stated that SMART staff have been working hard during the pandemic and getting ready and implementing everything that we heard and the feedback received from the public and Board. This concludes our presentations, and we are available to answer any question.

Chair Rabbitt thanked staff for all the work done to get to this point, to add the trains, the fares, and the survey. He believes it's right in line with what we heard through the listening sessions as well as a continuation of addressing those items today. He asked if there is any legal risk to Clipper not being able to adjust their card as quickly and to the SMART to have one entity, not be able to adjust the fares as quickly as the Board wants. Ms. McKillip responded no, we should not run into a problem with that, because we are offering those discounts through the APP mechanism, and we are going to direct them towards the APP for those discounts. In the fare schedule for those groups of people, and youth and we're going to try to do the low-income category.

Director Lucan stated that this is a great response to what we heard from in the listening sessions and is excited about being able to discuss this. He asked clarification regarding the holiday schedule. Mr. Mansourian responded that holidays will run on Saturday schedule. Director Lucan said that if the schedule were adopted, then SMART would run on Memorial Day weekend, and run that schedule on Saturday, no service on Sunday to Saturday scheduled run on Monday and then back to the normal weekly schedule on Tuesday. Mr. Mansourian responded yes. Director Lucan stated that APPs on how to buy a ticket continues to be a barrier for entry for a lot of people that are new to riding public transit. He asked if SMART will always promote two Apps for it for the long time of SMART's future. Ms. McKillop responded that not for the long term, at some point Clipper will be going to their new account-based system which will allow us to do promotional fares and other things that we've been using the Masabi APP for, so there is a hope. For simplicity sake and being a good partner with Clipper, once they move to the new system, we would like to see if we could eliminate them. Director Lucan said that it makes it difficult marketing challenge for Outreach department, and you're probably already thinking about a simple chart that can be on the website that shows options and availability. Ms. McKillop said that staff is working to make it as simple as possible and we are producing materials to explain it to people. We will not be preventing people from using their clipper in the case of the monthly pass it is still a very affordable pass if people want to use that we can't stop them from using that, but we will be advising them that they may want to look at their situation, and they may have a better deal if they use the APP in the interim. Director Lucan suggested have a promotion when people download the APP.

Director Rogers asked if the Masabi App the same as the SMART App. Ms. McKillop responded yes, it is the SMART E-Ticket APP and it has our symbol that I displayed on the screen.

Director Fudge stated that she was trying to download them a Masabi APP as well and didn't exist, except if you wanted to buy tickets in London. She urged staff not to use the word Masabi.

Public Comment

Steve Birdlebough addressed his concerns that SMART is not exactly at 60 minute intervals during the day. He said SMART is running on 62 or maybe 64 minutes between trains. He is wondering if the other operators converting to this 62 or 64 minute time schedule, or does it mean that sometimes people are able to connect to the bus and sometimes they'll miss the bus or if they're trying to get from the bus to the train the other way.

Eris Weaver stated that she is personally thrilled about the possible changes in fares. Her daily commute on SMART was the most expensive possible transit way to get from my home to work, compared to Golden Gate Transit and Sonoma County Transit and this change would make it more comparable. She thanked Director Rogers for clarifying the correct APP name for SMART. She said that there is a possibility for a lot of confusion with the variety of APP and promotional fares. She sees people standing at the station Downtown Santa Rosa is newer riders coming up and really having a hard time figuring out. She suggested that staff really explain on all printed materials. She is particularly happy about adding a Saturday back in and then another late train coming southbound in the evening because that's often been a hard for her since she could have late evening meetings or working late.

Richard Brand stated it is exciting to see the change that we're going to have regarding the presentation on the fares and schedules. He encouraged staff to use the Citizens Oversight Committee to get his input to save the Board a lot of time and input. He thanked Ms. McKillop for a great job on the fares and schedule. Very exciting time frames it is going to help us to go when we go out and get the tax extension. This presentation cannot be a substitute for a report on the listening sessions and Director Connolly and the subcommittee went through and look forward to hearing more on the summary information.

Sheila Baker stated that she is delighted and beyond happy for the schedule and fares. This is good news for her and just in time for my next visit. The last couple of times she has ridden the train the youthful riders were having a great time they were loving their ride. It appears to be the next generation of adults and seniors who are not going to be driving but they're going to be riding the train because they've started right at this point, having a great good experience on the train. She thanked staff for an excellent job and making the changes.

Mike Pechner stated that the Saturday trains, you should be targeted for the daytime Giants games at Oracle Park and connection with the ferry. SMART has the chance to target those Saturday games and offer a train/ferry combination, or at least urge Giant fans to use SMART and take the ferry.

Chair Rabbitt stated that this is a discussion item only.

Director Connolly stated that he like the package of proposals and it's a testament to some great work by staff and also was emphasize by the results of hearing the public through the listening sessions. He particularly focused on the fare issue, this is the type of bold move on fares that is needed now while will result in less revenue in the short term it will increase ridership and therefore help the revenue bottom line and the longer term. That is a clear take away from what we heard from the public outreach and bringing back weekend service is big.

Again, overall this is a strong package and proposals to get riders back on the system and he is in support.

Director Fudge stated this was a welcome surprise and it looks like a lot of work went into it and it really makes a lot of sense. The firm that we're using for communications will really have their work cut out for them to explain all the differences as well social media (Facebook). She is concerned about is the word promotional and that this is for one year, she don't think SMART will be able to raise the fares to where they were and the Board will relook at the fares in a year, and because we can't keep supporting you low fares for a long time. She asked what's the plan for a year from now, she is afraid the public will think this is permanent because she can tell from comments that people are asking.

Daniel Hillmer stated that he wants to amplify Director Connolly comments about the strong proposals that are in this package and the direct correlation because some of us have been with the process for some time to know that there's a direct line between what was heard from the public, the problems that have been defined and the challenges that the pandemic has proposed, as well as others, and the response. He is very impressed, both by the timeliness the thoughtfulness the creativity and the strength of the of the response. He is very proud of the staff and their efforts.

Director Lucan stated that this is phenomenal, and we should all be jumping up and down and celebrating. This is the first time we've adjusted fares since the start of passenger service, and this is very aggressive and a step in the right direction, he is excited about it. The good news is that based on Ms. McKillop calculations it is only going to cost \$500k out of the \$5M that has been set aside through the end of the revenue measure. Not saying we can do this every year because we're expecting our fare revenues to increase over time, however we can continue to offer promotional rates as we build back ridership and know that we can have incentivizes for people to come back to ride SMART. He is very curious to see how the public responds once we put this out.

Chair Rabbitt stated that this is great work and time, and effort was put into the package to addressed what was heard through the surveys and listening sessions and primary heard that is about convenience and he thinks that comes out of living in suburbia. People will take the train if it's at least as convenient as my other modes of transportation that are available, that goes to the first and last mile convenience of that access and having enough trains running so that it gets me where I need to go without taking you know twice as long. The fare package that was presented is attractive and in a big deal, he thinks it is easy to be jaded and cynical sometimes, but it is also important to recognize when we're moving in the right direction and making giant leaps forward. The farebox recovery will come back with more passengers, even with paying a slightly lower fare and that is the goal. In his opinion, at least, is to continue going forward and he appreciates that, and continuing to build up service. He is very thankful for the work that has been done today, and it is going to be great since it molds into the Welcome Back Campaign and getting the word out and of course there are some challenges with how that all is going to happen. We have the pieces in place to address that in beat that challenge.

Ms. McKillop responded to Director Fudge comments and SMART understand that it's meant to be temporary, in time, even though a year is not a short period of time and doubt that staff would raise the fares on day 366. However, staff is planning on coming back to the Board on a regular basis reporting out on a monthly basis from the fares perspective and ridership. We may have additional recommendations as we move forward with next year especially, as we have options with Clipper on changing the fare and it's going to be an ongoing conversation.

General Manager Mansourian stated that staff will continue working with our bus and ferry partners. At this time there are different schedules for example Larkspur ferry only has seven ferry's and we will be having 13 trains. We will coordinate with Santa Rosa Bus with Marin County bus so this will be ongoing conversation as more services are added. SMART wants to be the people's transportation choice, staff has listened to the public and will continue to make improvements, and this is a tremendous beginning, we start on Monday, May 24th. Staff really appreciate public comments and the guidance, that your board has provided us.

Chair Rabbitt stated that he can only imagine the difficulties of melding schedules together with all the different agencies, all the different timetables that are out there. General Manager Mansourian spoke to one school, for instance, who had a block of kids that needed to arrive at the school or leave from the school at a certain hour, how do you make that work versus what happens at the ferry with everything in between. He knows that staff is always trying to adjust and to maximize the percentage of connections that we're going to achieve. He doubts that SMART could ever get to 100% and there are going to be some sacrifice along the way, however staff is trying to make the most connections as convenient as possible going forward.

We are getting close and would imagine that the General Manager and team will start telling us about whether we're staying virtual, or whether we're going to do a hybrid or whether we're going to get back into the same room.

10. Next Regular Meeting of the Board of Directors, June 2, 2021 – 1:30 PM

11. Adjournment – Meeting adjourned at 4:09pm

Respectfully submitted,

Leticia Rosas-Mendoza
Clerk of the Board

Approved on: _____



June 2, 2021

David Rabbitt, Chair
Sonoma County Board of Supervisors

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

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Damon Connolly
Marin County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Susan Gorin
Sonoma County Board of Supervisors

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Farhad Mansourian
General Manager

5401 Old Redwood Highway
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Petaluma, CA 94954
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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: Monthly Finance Reports

Dear Board Members:

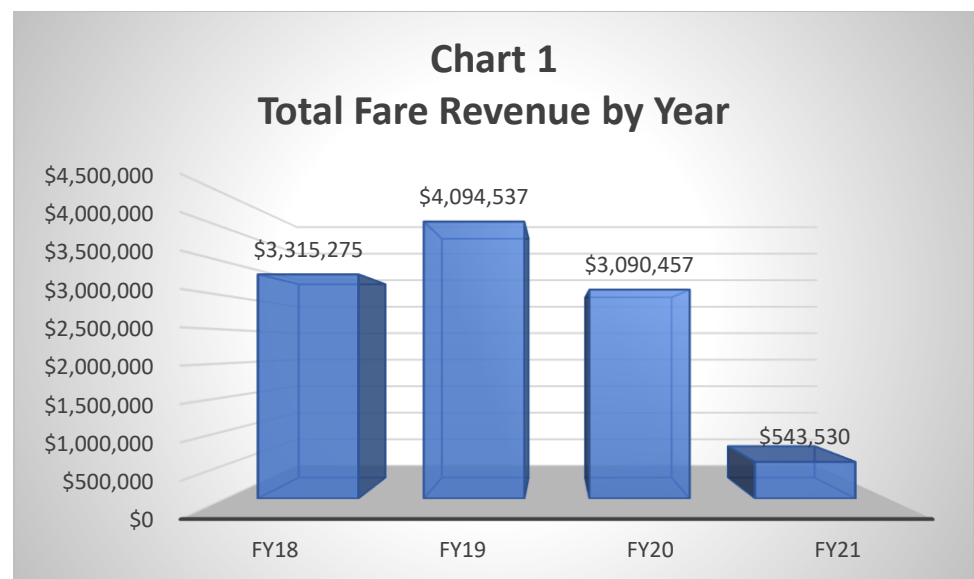
RECOMMENDATION: Information Item

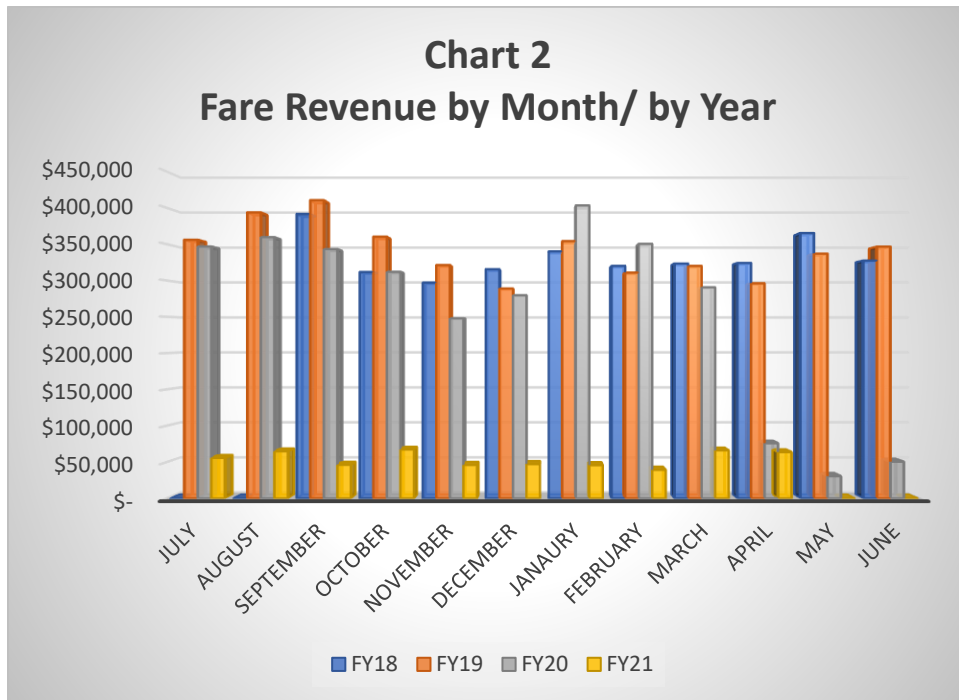
SUMMARY:

We are presenting the monthly reports for activity through the month of April which includes transactions for ten months of Fiscal Year 2020-21.

Fare Revenue

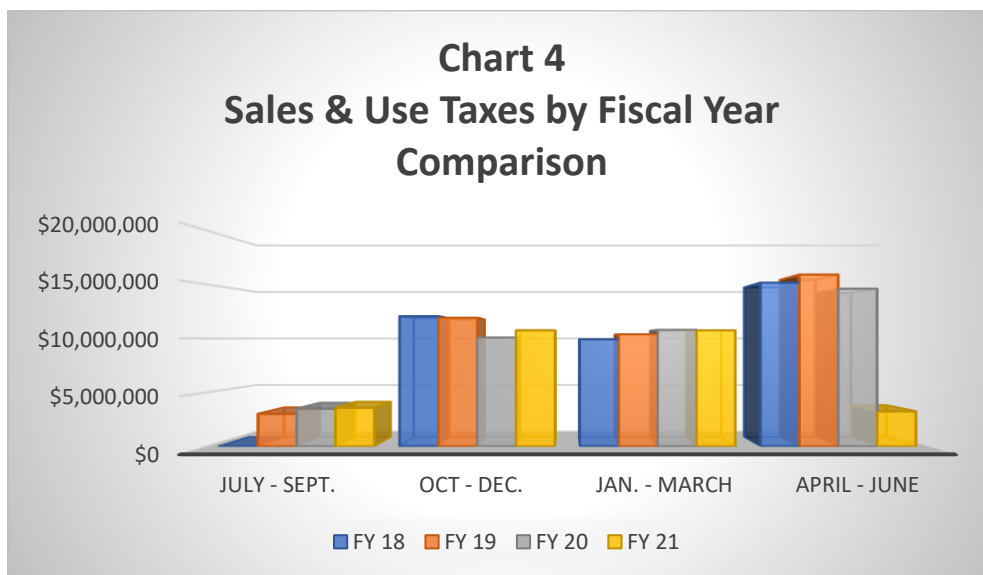
Fare revenue is \$543,530 for the first ten months of FY 2020/21. Chart 1 is fare revenue comparison for FY 2018 – FY 2021 to date. Chart 2 is fare revenue comparison by month and fiscal year. In addition to the fare revenues, SMART has collected \$3,071 in parking fees.

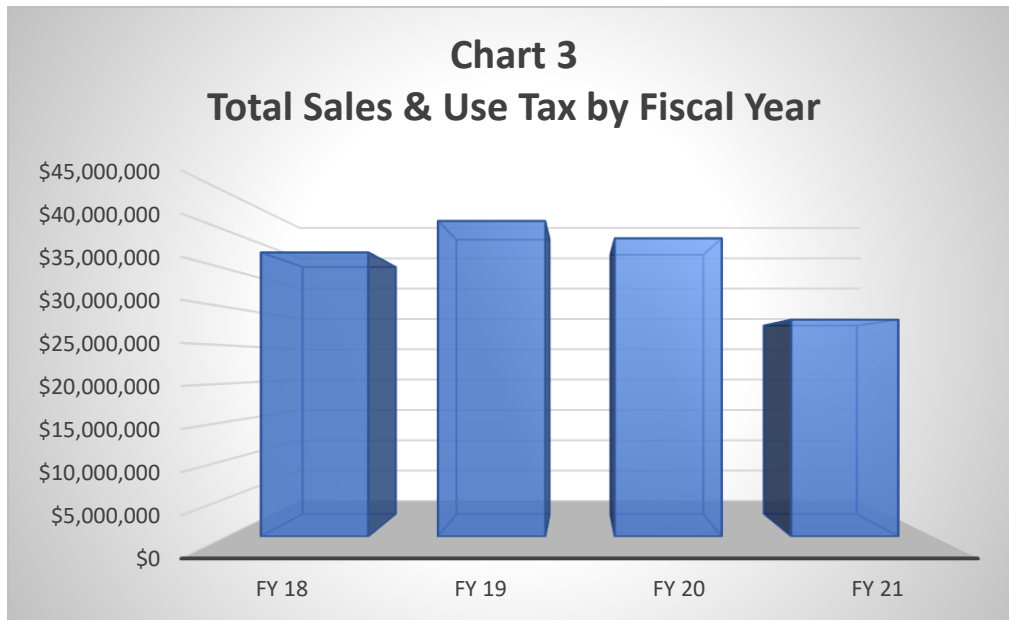




Sales & Use Tax

The amended budget estimate for sales and use tax is \$39,133,000. Through March 2021, we have received \$28,348,099. We will be very close to meeting our estimated sales and use tax for FY 2020/21. See chart 3 for a comparison of sales tax by fiscal year and chart 4 for sales tax by month by fiscal year.





On March 24, 2021, MTC approved the second allocation of Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA). SMART received \$1,789,716. Those funds have been reflected in this monthly report. We have billed and received those funds and will be reflected in the May report.

Very truly yours,

/s/
Heather McKillop
Chief Financial Officer

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

Sonoma-Marin Area Rail Transit District

Monthly Finance Reports

Through April 2021

	FY 2020-21					
	Revised Budget		Actual	Remaining Budget		
Revenues						
Administration						
Sales/Use Taxes	\$	20,653,096	\$	20,653,096	\$	-
Interest Earnings		380,000		249,490		130,510
Rent - Real Estate		313,700		264,326		49,374
Advertising Revenue		45,000		10,032		34,968
Miscellaneous Revenue		4,120,693		4,877,012		
Administration Subtotal		25,512,489		26,053,956		214,852
Operations						
Sales/Use Tax		7,695,003		7,695,003		-
Fare & Parking Revenue		680,525		546,600		133,925
Federal Funds		11,584,064		8,431,456		3,152,608
State Grants		6,175,380		3,520,446		2,654,934.00
Other Charges		65,000		67,555		
Operations Subtotal		26,199,972		20,261,060		5,941,467
Capital						
Sales/Use Tax		3,771,553		241,060		3,530,493
Federal Funds		4,494,025		-		4,494,025
State Grants		14,028,750		111,189		13,917,561
Other Governments/Misc		4,956,500		2,433,895		2,522,605
Measure M		157,348		53,091		104,257
Capital Subtotal		27,408,176		2,839,235		24,568,941
Freight						
State Grants		6,000,000		11,012		5,988,988
Freight Subtotal		6,000,000		11,012		5,988,988
Revenue Total \$ 85,120,637 * \$ 49,165,263 \$ 36,714,248						
Expenditures						
Administration						
Salaries & Benefits	\$	5,041,970	\$	3,669,137	\$	1,372,833
Services & Supplies		6,183,260		3,229,906		2,953,354
Debt Service/Other Charges		14,284,259		5,114,802		9,169,457
Machinery & Equipment		3,000		2,416		584
Administration Subtotal		25,512,489		12,016,261		13,496,228
Operations						
Salaries & Benefits		15,510,578		9,632,213		5,878,365
Services & Supplies		8,259,616		3,441,275		4,818,341
Buildings & Capital Improvements		2,429,778		749,858		1,679,920
Operations Subtotal		26,199,972		13,823,346		12,376,626
Capital						
Salaries & Benefits		1,417,761		1,051,963		365,798
Services & Supplies		852,736		263,104		589,632
Other Charges		3,786,500		3,403,893		382,607
Machinery & Equipment		3,177,138		-		3,177,138
Infrastructure		18,174,041		11,974,992		6,199,049
Capital Subtotal		27,408,176		16,693,952		10,714,224
Freight						
Expenditures		6,000,000		11,012		5,988,988
Freight Subtotal		6,000,000		11,012		5,988,988
Expenditure Total \$ 85,120,637 ** \$ 42,544,571 \$ 42,576,066						

Investment Report			
		Amount	
Sonoma County Treasury Pool			
Bond Reserve Fund		\$	-
Interest Fund			304,859
Principal Fund			2,216,133
Sonoma County Treasury Pool Subtotal		\$	2,520,992
SMART Operating Accounts			
Bank of Marin			25,100,991
Sonoma County Treasury Pool			36,857,898
SMART Operating Accounts Subtotal	Total	\$	61,958,889
Investment Report Total		\$	64,479,881

Capital Project Report				
	Budget		Actual	Remaining
Additional Railcar Purchase				
Revenues	\$	11,000,000	\$ 8,250,000	\$ 2,750,000
Expenditures	\$	11,000,000	\$ 8,250,000	\$ 2,750,000
Windsor Extension				
Revenues	\$	65,000,000	\$ 12,253,326	\$ 52,746,674
Expenditures	\$	65,000,000	\$ 24,408,475	\$ 40,591,525
Sonoma County Pathway Connector Project				
Revenues	\$	13,573,526	\$ 232,952	\$ 13,340,574
Expenditures	\$	13,573,526	\$ 1,195,852	\$ 12,377,674

* Total differs from revenue total in the Amended Budget. Variance is related to line 1 of Table 1 of the Amended budget, and is the amount of Sales Tax we anticipate will transfer to fund balance at Year-end

** Expenditures are \$889,941 higher than amount shown in Amended Budget, and are a roll-forward from Fiscal Year 2019-20



Contract Summary

Active Contracts as of May 1, 2021

Contractor	Scope	Fiscal Year 20/21 Projected	Fiscal Year 20/21 Actuals-To-Date
A.J. Janitorial Service	Janitorial Services for all Stations, Roblar, ROC, and Fulton	\$109,500.00	\$84,600.00
AI-Media, Inc.	As Needed Live Captioning Services for Public Meetings	\$7,500.00	\$2,565.00
Air Technology West	Maintenance and On-Call Repair for Air Compressors	\$7,856.00	\$2,995.00
Alcohol & Drug Testing Services, LLC	DOT Drug and Alcohol Testing	\$25,000.00	\$9,310.00
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 Consultants, Inc.	Railroad Bridge Engineering, Inspection, & Design	\$40,000.00	\$20,744.00
Aramark Uniform Services	Employee Uniform Provider and Cleaning Service	\$18,000.00	\$16,227.00
Asbury Environmental Services (AES)	Recycling & Disposal Service for Used Oil, Fuel Filters, Rags, and Related Equipment	\$20,253.00	\$1,030.00
Barbier Security Group	Security Patrol Services along Right-of-Way	\$74,825.00	\$0.00
Barnes & Company, LLC	Safety Outreach Services	\$15,100.00	\$15,100.00
Becoming Independent	Emergency Bus Bridge Services	\$50,000.00	\$9,000.00
Bettin Investigations	Background Investigations	\$8,000.00	\$2,894.00
Bright Star Security, Inc.	Security Patrol Services at SMART's Cal Park Tunnel	\$10,440.00	\$7,830.00
Burke, Williams & Sorensen, LLP	Litigation Support Services	\$100,000.00	\$0.00
Business Training Library, LLC	Cloud-Based Learning Courses	\$12,605.00	\$12,605.00
Certified Employment Group	Temporary Staffing Services	\$35,000.00	\$8,446.00
Cinquini & Passarino, Inc.	Right-of-Way Land Surveying and Related Services	\$36,000.00	\$4,128.00
Civic Edge Consulting	Social Media Outreach Strategy Consulting	\$99,975.00	\$57,775.00
CMC Traffic Control Specialists	Flagging and Traffic Control Services for SMART's Maintenance of Way Projects	\$10,000.00	\$8,758.00
Corey, Canapary & Galanis	NTD Compliant Passenger Counting Services	\$26,282.00	\$8,617.00
DeAngelo Brothers, LLC (DBI Services)	Vegetation Control Services	\$38,000.00	\$37,651.00
Delta Wheel Truing Solutions	Modifications to the Wheel Truing Machine	\$34,911.00	\$34,911.00
Doug Williams	Fire and Life Safety Consultant	\$8,000.00	\$1,125.00
Dr. Lance O'Connor	Occupational Health Screening Services	\$3,000.00	\$0.00
Dr. Mark Clementi	Pre-Employment Psychological Evaluations	\$25,000.00	\$13,188.00
eLock Technologies, LLC	Station Bike Lockers and Maintenance Services	\$13,130.00	\$5,565.00
Emily Betts	Transit Planning & Related Services	\$50,000.00	\$23,020.00
Empire Cleaners	Uniform Dry-Cleaning, Laundering, and Related Services	\$40,000.00	\$9,237.00
Emtec Consulting Services, LLC	Oracle Accounting System Support Services	\$15,000.00	\$0.00
Engelke Construction, Inc.	Driveway Approach Construction and Replacement of Concrete Wheel Stops	\$24,193.00	\$24,193.00
Environmental Logistics, INC.	On-Call Biohazard Remediation Services	\$150,000.00	\$0.00
Federated Indians of Graton Rancheria	Tribal Monitoring for Ground-Disturbing Activities - Windsor	\$13,500.00	\$619.00
George Hills Company, Inc.	Third Party Claims Administration Services	\$25,000.00	\$3,625.00
GHD, Inc.	3 Segments MUP Petaluma - Penngrove - Rohnert Park	\$1,240,342.00	\$790,479.00
GHD, Inc.	SWPP Compliance, AutoCAD Management, Traffic and Hydraulic Analysis	\$52,371.00	\$31,847.00
Golden Gate Bridge, Highway and Transportation District	Customer Service Support Services	\$30,971.00	\$30,971.00
GP Crane & Hoist Services	Cal/OSHA Crane Inspection Services	\$15,000.00	\$1,859.00
Granicus, Inc.	Media Streaming and Internet Broadcasting Services	\$2,514.00	\$2,514.00
Hanford A.R.C.	Implementation and Monitoring Las Gallinas Creek Riparian Enhancement Plan	\$16,600.00	\$11,484.00
Hanson Bridgett LLP	Legal Services	\$100,000.00	\$57,099.00
Heavy Equipment Transportation, Inc.	Transportation of Heavy Equipment	\$7,350.00	\$5,470.00
Herzog Contracting Corp.	Purchase of Hi-Rail Scrubber Brush Truck	\$458,410.00	\$458,410.00
Hogan Lovells LLP	Legal Services - Freight and Passenger Rail Sector	\$25,000.00	\$13,962.00
Holland Company	Track Geometry and Measurement Services	\$24,000.00	\$24,000.00
Hulcher Services, Inc.	On-Call Derailment Services	\$100,000.00	\$0.00
Innovative Business Solutions	Payroll processing services	\$35,400.00	\$21,695.00

Contractor	Scope	Fiscal Year 20/21 Projected	Fiscal Year 20/21 Actuals-To-Date
Integrative Security Controls, Inc.	CCTV Maintenance and Support	\$25,000.00	\$0.00
Intelligent Technology Solutions, Inc.	Maximo MMS Implementation and Support Services	\$228,000.00	\$157,222.00
JMA Civil, Inc.	On-Call Civil & Rail Engineering Design Services	\$96,000.00	\$53,404.00
Leete Generators	Generator Maintenance	\$4,829.00	\$4,829.00
LM Disability Consulting	Disability Access Consulting	\$12,000.00	\$2,556.00
Masabi LLC	SMART Mobile Ticketing Pilot Project	\$570,000.00	\$42,750.00
MaxAccel	Compliance Management Software Design/Implementation/Asset Management	\$15,785.00	\$11,765.00
Maze & Associates	Financial Audit Services	\$53,116.00	\$29,667.00
MGrodner, LLC	Project Management Services	\$30,000.00	\$2,730.00
Michael Seybold dba Farmhouse Teaching Services	First Aid, CPR, and AED Certification Training for Administrative Staff	\$2,000.00	\$1,014.00
Mike Brown Electric Co.	On-Call Electrical Maintenance	\$25,000.00	\$0.00
Militus, Inc.	Cyber Security Services	\$40,000.00	\$40,000.00
Mission Linen Supply	Employee Uniform Services	\$18,000.00	\$2,667.00
Modern Railway Systems, Inc.	Design and Construction of Systems Improvements for the Windsor Extension Project	\$5,000,000.00	\$3,688,807.00
Netspeed Solutions, Inc.	SMART Phone System Maintenance	\$16,118.00	\$11,867.00
Netwoven Inc.	SharePoint Maintenance, Support, Implementation, and Related Services	\$113,000.00	\$63,957.00
Nextdoor Inc.	Use of Nextdoor Platform for Community Notifications	\$10,529.00	\$10,529.00
Nixon Peabody LLP	Bond Counsel Services	\$100,000.00	\$80,000.00
Nixon Peabody LLP	As-Needed Disclosure and Bond Counsel Services	\$10,500.00	\$0.00
North Bay Petroleum	Provision of Fuel for DMUs	\$527,900.00	\$38,381.00
North Bay SAP Services	Substance Abuse Professional Services	\$3,800.00	\$600.00
Occupational Health Centers of CA	Pre-Employment Evaluation Services	\$19,888.00	\$4,985.00
Oracle	Fusion ERP System	\$47,712.00	\$35,784.00
Pamco Machine Works, Inc.	Railroad Wheel Pressing Services	\$174,920.00	\$72,219.00
Parodi Investigative Solutions	Pre-Employment Background Investigation Services	\$18,000.00	\$6,000.00
PFM Financial Advisors, LLC	As-Needed Financial Consultant Services	\$40,000.00	\$0.00
PFM Financial Advisors, LLC	Bond Refinancing Financial Advising Services	\$150,000.00	\$150,000.00
Pivotal Vision, LLC	Security Software Licensing	\$2,200.00	\$2,200.00
Portola Systems, Inc.	SMART Station Network Configuration Services	\$220,545.00	\$202,106.00
Precision Wireless	Tech Support and Maintenance for Land Mobile Radio	\$30,000.00	\$3,528.00
Premier Fall Protection, Inc.	Inspection and Certification Services for SMART's Fall Protection Equipment	\$8,000.00	\$2,784.00
Project Finance Advisory Limited	Freight Service Option Analysis	\$67,726.00	\$34,802.00
Public Financial Mangement, Inc.	Arbitrage Rebate Compliance Services	\$2,000.00	\$2,000.00
Railquip, INC.	Inspection and Certification Services for Portable Electric Lifting Jacks	\$2,000.00	\$1,375.00
Railquip, INC.	Providing Portable Hydraulic Rerailing Equipment, Training, and Related Services	\$147,722.00	\$147,722.00
Santa Rosa Fire Equipment Service, Inc.	SMART Fire Equipment Maintenance	\$5,000.00	\$2,851.00
SEFAC USA	Portable Lifting Jack Inspection and Certification Services	\$8,000.00	\$1,270.00
Sonoma County Fleet Operation Division	Non-Revenue Fleet Maintenance Services	\$50,000.00	\$48,298.00
Sperry Rail Service	Rail Flaw Detection Services	\$13,500.00	\$0.00
SPTJ Consulting	Network Infrastructure, Security, Migration and Setup Services	\$340,470.00	\$109,210.00
Stacy and Witbeck, Inc.	Design/Build Construction of Civil, Track & Structures of Windsor Extension	\$11,389,651.00	\$10,435,182.00
Stacy and Witbeck/Herzog, JV	Design/Build Construction of Civil, Track & Structures Improvements of Larkspur Extension	\$443,166.00	\$443,166.00
Stantec Consulting Services, Inc.	Environmental Permit Management and Construction Compliance Monitoring	\$30,830.00	\$6,439.00
Stericycle, Inc.	Medical Waste Pick-Up and Disposal Services	\$1,836.00	\$0.00
Sue Evans	Real Estate Acquisition, Relocation Services, Appraisal Support, Title Investigation Service	\$17,500.00	\$11,115.00
Sumitomo Corporation	Manufacture & Delivery of Rail Vehicles	\$2,750,000.00	\$0.00
Summit Signal, Inc.	Emergency Call-Out Services for Track and Signals	\$11,056.00	\$9,868.00

Contractor	Scope	Fiscal Year 20/21 Projected	Fiscal Year 20/21 Actuals-To-Date
Survival CPR & First Aid, LLC	First Aid and CPR Training, AED Compliance Program	\$10,000.00	\$9,187.00
Swiftly, Inc.	AVL Mobile Application and Website Interface	\$8,400.00	\$8,400.00
Testing Engineers, Inc.	Material Failure Analysis on cracked flywheel from DMU	\$4,500.00	\$4,500.00
Triliant, LLC	Online Training Program	\$1,060.00	\$1,060.00
Transportation Analytics	Transit Financial Modeling, Benchmarking, Performance Metrics, Benefit-Cost Analysis, and	\$25,000.00	\$21,510.00
Trillium Solutions, Inc.	Transit Feed Mapping Software	\$1,000.00	\$1,000.00
United Mechanical Incorporated	HVAC Service, Maintenance and Related Services	\$10,513.00	\$3,545.00
United Mechanical Incorporated	Repair Air Dryer located at ROC	\$3,317.00	\$3,317.00
United Mechanical Incorporated	HVAC Maintenance Services at SMART Facilities	\$8,709.00	\$6,487.00
Van Scoyoc Associates	Federal Lobbying Services	\$60,000.00	\$40,000.00
VenTek Transit Inc.	Fare Vending Machine Operations and Maintenance Services	\$210,414.00	\$135,541.00
VenTek Transit Inc.	Clipper Vending Machine Operations and Maintenance Services	\$45,746.00	\$42,796.00
VenTek Transit Inc.	Clipper Card Vending Machine Contract Assigned to SMART	\$77,138.00	\$0.00
WBE	Existing CCTV System On-Call Maintenance	\$25,000.00	\$6,707.00
West Coast Arborists, Inc.	Tree Trimming and Tree Removal Services	\$30,000.00	\$0.00
WRA Environmental Consultants	Environmental Permitting, Management, & Support Services	\$189,245.00	\$146,451.00
Ziebarth and Associates, Inc.	Freight Service Consulting Services	\$20,000.00	\$6,469.00
	Totals:	\$26,997,369.00	\$18,288,167.00

Actuals-To-Date includes invoices that have been approved as of April 30, 2021, but may not have been processed in SMART's Financial System.



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

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Susan Gorin
Sonoma County Board of Supervisors

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Farhad Mansourian
General Manager

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

June 2, 2021

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

SUBJECT: Windsor Extension Project – Temporary Suspension Change Orders for Contract No. CV-DB-18-001 and Contract No. CV-SYS-18-001

Dear Board Members:

RECOMMENDATION:

Approve Resolutions 2021-13 and 2021-14 to authorize the General Manager to execute Change Orders CO-014 to Contract No. CV-DB-18-001 and CO-003 to Contract No. SYS-DB-18-001 that modifies some of the Contract provisions while the Windsor Extension work is temporary suspended until the Regional Measure 3 (RM3) funding is allocated.

SUMMARY:

SMART has embarked on extending the passenger rail system to the Town of Windsor. Construction began in the Spring of 2020. Work is being put on hold due to funding constraints. Change Orders CO-014 to Contract No. CV-DB-18-001 and CO-003 to Contract No. SYS-DB-18-001 temporarily modify contract provisions while the work is temporarily suspended due to funding constraints.

BACKGROUND:

In 2018 SMART initiated work to extend the passenger rail system one station to the north to the Town of Windsor. The three-mile extension includes a new station in downtown Windsor, a park and ride lot, and a continuous bicycle and pedestrian pathway connecting stations from Airport Boulevard at the Airport Station to the Windsor Station at Windsor River Road/Windsor Road.

SMART compiled a funding plan for the project as follows:

- Federal Railroad Administration (FRA): \$5M
- State of California SB1 Transit Intercity Rail Program: \$20M
- State of California Cap and Trade/Affordable Housing: \$5M
- Regional Measure 3: \$35M

The Metropolitan Transportation Commission (MTC) Regional Measure 3 (RM 3) funding is the result of a toll increase to the seven Bay Area state-owned bridges that was passed by a simple majority on June 5, 2018. The toll would increase bridge tolls in dollar increments up to \$3 dollars in 2025. This is the third bridge toll increase in the Regional Measure program. RM 1 was approved in 1988 and increased bridge tolls by a dollar, and RM 2, that also increased tolls by another dollar, was approved in 2004.

The Howard Jarvis Taxpayer Association, a taxpayer advocacy group, filed a lawsuit arguing that the RM 3 toll increase was a tax, which would require a two-thirds majority vote, not the 55 percent that the measure received. The appellate court that heard the case found that the toll increase represented a user fee, not a tax. The decision was appealed to the First District Court in San Francisco who upheld the lower court decision. The Howard Jarvis Taxpayer Association has now appealed to the state Supreme Court who has agreed to hear the case. Because the litigation is ongoing, the RM 3 funding has not been released.

PROJECT STATUS:

Using available Federal and State grant funds, SMART developed preliminary engineering documents, prepared environmental permit applications, and hired a Systems Design-Build Contractor in 2018. In 2019 SMART secured most of the regulatory environmental permits and hired a Civil Design-Build Contractor. SMART issued limited notices-to-proceed to the Civil and Systems contractors due to the limited available funding. This is an approach that SMART has used with other contracts, such as the Larkspur Extension Project, when the Federal Transit Administration (FTA) funding was not available at the start of construction. In that project, SMART worked with the FTA to secure a Letter of No Prejudice (LONP). The LONP established that SMART would become eligible for reimbursement from the date of the letter. SMART has received an LONP from MTC for the RM 3 funding that establishes that the Project is eligible for reimbursement from October 2020, once the RM 3 lawsuit is resolved.

In 2020 and 2021, the design-build contractors completed the design work and prepared construction documents, completed the design of the train control system, cleared overgrown vegetation from the right-of-way and began construction. Our goal with the construction work was to complete work that would best position the project once the funding uncertainties were resolved. Thus, we focused on completing “in-water” work that had restricted work windows as part of the regulatory environmental permits. This work included removing old bridges, replacing drainage culverts, constructing bridge foundations and other work covered by these limitations. That work was completed successfully this summer and fall along with procuring long lead items such as concrete ties and new rail. We even set two bicycle pedestrian bridges as part of the work this season. By completing all that we did, the project is well positioned, with fewer restrictions, to resume work once we have the go-ahead.

SMART include the widening of Airport Boulevard between Regional Parkway and Aviation Boulevard at the request of the County of Sonoma. This work was also designed and constructed through Contract CV-DB-18-001 and is complete.

SMART has taken a measured approach to constructing the Windsor Extension Project and positioned the project to efficiently resume once the funding issues have been resolved. The project site has been “moth-balled” such that materials have been carefully stored and the project site secured.

The schedule for the State Supreme Court to hear the case is uncertain. There will be additional costs to the Project to remobilize contractors and address probable escalation costs for material and labor adjustments. Until it becomes clear how long the delay will be, it is not possible to estimate the additional costs. Once, there is resolution to the funding, SMART will work with MTC and the other funding agencies to update the project budget and funding plan.

Staff recommends approving Resolutions 2021-13 and 2021-14 to authorize the General Manager to execute Change Orders CO-014 to Contract No. CV-DB-18-001 and CO-003 to Contract No. SYS-DB-18-001 that modifies some of the Contract provisions while the Windsor Extension work is temporary suspended until the RM 3 funding, or a substitute funding source becomes available.

FISCAL IMPACT: There is not current fiscal impact of these change orders.

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

Very truly yours,

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

Attachment(s):

- 1) Resolution No. 2021-13 - Contract No. CV-DB-18-001 Change Order 014
- 2) Resolution No. 2021-14 - Contract No. SYS-DB-18-001 Change Order 003

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT APPROVING CHANGE ORDER 003 TO CONTRACT NO. CV-DB-18-001 FOR THE DESIGN AND CONSTRUCTION OF THE SYSTEMS COMPONENTS FOR THE WINDSOR EXTENSION

WHEREAS, On November 22, 2019, the SMART District awarded Contract No. CV-DB-18-001 to Modern Railway Systems, Inc. for the design and construction of Train Control and Communications Systems for the 3-mile extension of the SMART District passenger rail system to the Town of Windsor; and

WHEREAS, On November 22, 2019, the SMART District issued a Limited Notice to Proceed for the Contract.; and

WHEREAS, The Windsor Extension Project (the “Project”), of which Contract No. CV-DB-18-001 is an element, includes Regional Measure 3 Bridge Toll Funding (“RM3 Funding”) in the overall budget.; and

WHEREAS, The RM3 Funding has not been released by the funding authority due to lawsuit claiming that the fee is a tax and not a user toll; and

WHEREAS, SMART District is delaying the delivery of additional Notice(s) to Proceed for Contract No. CV-DB-18-001 until the unfunded portion of the Project budget becomes available; and

WHEREAS, The SMART District has prepared Change Order 014 which includes a Side Letter Agreement that temporarily modifies certain Contract No. CV-DB-18-001 provisions until such time as funding becomes available and District issues a Notice to Proceed for the Contract.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. That the foregoing recitals are true and correct.
2. That Change Order 014 to Contract No. CV-DB-18-001, a copy of which is attached hereto and incorporated herein as Exhibit “A”, which includes a Side Letter Agreement, is hereby approved.

Resolution No. 2021-13
Sonoma-Marín Area Real Transit District
June 2, 2021

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 2nd day of June, 2021, 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

Change Order 014

Contract No.: CV-DB-18-001
Contract Title: Windsor Extension Project

**Issued to:**

Stacy and Witbeck Inc.
2800 Harbor Bay Parkway
Alameda, California 94502
Phone: (510) 393-2520

Change Notice Reference:

N/A

CO Title: Temporary Suspension – Side Letter Agreement

The Contract Price due to this CO will change by: \$0.00

The Contract Performance Time due to the CO will be change by: To be determined when Contract work resumes.

EXCEPT AS MODIFIED BY THIS CHANGE ORDER, ALL TERMS AND CONDITIONS OF THE CONTRACT, AS PREVIOUSLY MODIFIED, REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT. THE PARTIES AGREE THAT THIS CHANGE ORDER IS A FINAL AND EQUITABLE ADJUSTMENT OF THE CONTRACT TIME AND CONTRACT AMOUNT AND CONSTITUTES A MUTUAL ACCORD AND SATISFACTION OF ALL CURRENT CLAIMS, OF WHATEVER NATURE CAUSED BY OR ARISING OUT OF THE FACTS AND CIRCUMSTANCES SURROUNDING THIS CHANGE ORDER INCLUDING, BUT NOT LIMITED TO, DIRECT, INDIRECT AND CONSEQUENTIAL COSTS; ADDITIONAL TIME FOR PERFORMANCE; AND THE IMPACT OF THE CHANGE SPECIFIED IN THIS CHANGE ORDER, ALONE OR TAKEN WITH OTHER CHANGES, ON THE UNCHANGED WORK.

Description of change:

This Change Order 014 Temporary Suspension – Side Letter Agreement temporarily modifies the certain contract provisions until such time as funding becomes available and SMART issues a Notice to Proceed for the Contract. This no cost change order incorporates the attached Side Letter Agreement into the Contract. Also incorporated with this Change Order 014 is a “Mothball Memo” that documents that status of the project as of the date of this Change Order.

Concurred By:

Concurred By:

Project Manager

Date

District Chief Engineer

Date

John Riley

Bill Gamlen

The undersigned agrees to the terms and conditions described herein.

Contractor Acceptance

Sonoma-Marín Area Rail Transit

Title: Project Representative

Title: General Manager

(Authorized Signature for Contractor)

Date

(Authorized Signature for Owner)

Date

Nick Slama

Farhad Mansourian

CONTRACT No. CV-DB-18-001

SIDE LETTER AGREEMENT TO CONTRACT NO. CV-DB-18-001

THIS SIDE LETTER AGREEMENT to CONTRACT No. CV-DB-18-001 is made and entered into this ____ day of _____, 2021 (the “Side Letter Agreement”), between the SONOMA-MARIN AREA RAIL TRANSIT DISTRICT (the “SMART District”) and STACY WITBECK, INC. (hereinafter referred to as the “Contractor”) to address a temporary suspension of work.

RECITALS

A. On November 22, 2019, the SMART District and the Contactor executed CONTRACT No. CV-DB-18-001 for the design and construction of Civil improvements for the 3-mile extension of the SMART District passenger rail system to the Town of Windsor.

B. On December 16, 2019, the SMART District issued a Limited Notice to Proceed for the Contract.

C. The Windsor Extension Project (the “Project”), of which CONTRACT No. CV-DB-18-001 is an element, includes Regional Measure 3 Bridge Toll Funding (“RM3 Funding”) in the overall budget.

D. The RM3 Funding has not been released by the funding authority due to lawsuit claiming that the fee is a tax and not a user toll.

E. SMART District is delaying the delivery of additional Notice(s) to Proceed for CONTRACT No. CV-DB-18-001 until the unfunded portion of the Project budget becomes available.

F. This Side Letter Agreement between SMART District and Contractor temporarily modifies certain CONTRACT No. CV-DB-18-001 provisions until such time as funding becomes available and the District issues a Notice to Proceed for the Contract.

G. Except to the extent the CONTRACT No. CV-DB-18-001 is being temporarily modified pursuant this Side Letter Agreement, CONTRACT No. CV-DB-18-001, 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 other provisions of CONTRACT No. CV-DB-18-001.

NOW, THEREFORE, in consideration of the recitals set forth above which are incorporated herein by reference as if fully set forth in the body of this Agreement and the covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the District and Contractor (“Parties”) hereto agree as follows:

- GC 7.1.3.5(b) Payroll Records – Contractor shall not be required to submit payroll records, and any other periodic records required by the Contract Documents, during the suspension duration of the non-performance of Work.
- GC7.1.3.6 Claim for Additional Compensation – It is mutually understood and agreed the suspension of Work will cause Work to be delayed is at no fault of Contractor and Contractor will be allowed to request and may receive compensation related to remobilization costs, inefficiencies, wage increases and material escalation, including fuel, for components of Work that occur once Work restarts to the point in time the Work is Substantially Complete.
- GC7.1.4.1 Design Professional Licensing Laws – It is understood that Contractor can submit and be compensated for reasonable costs incurred because of licensing expired during the suspension of Work that may cause for resealing/restamping of any engineering drawings, specification, submittals, and other work products.
- GC7.1.6 Accessibility – It is understood that the implementation of the design in the field is not complete. Contractor and the SMART District have made attempts to ensure that Work in place generally complies with the General Conditions. Contractor will not have the duty to maintain nor monitor these General Conditions during the time of suspension. Any changes in the law or requirements related to accessibility that impact design or construction will be brought to the attention of the SMART District and submitted as a Change Proposal.
- GC7.3 Payment of Taxes – Contractor will make all payments and address any current tax liabilities related to Work performed prior to suspension date and will not have any duty under this General Condition until work resumes.
- GC7.4 Permits and Licenses – Any suspension, extension and or maintenance of permits or licenses related to work within the Contract deriving out of the suspension of the Contract Work, will be Owner’s responsibility.
- GC7.6(a) Safety Reports – it is understood that monthly reporting requirements will be not required during the suspension period.
- GC7.10 Environmental Compliance – It is agreed that Contractor responsibility for onsite conditions is relieved beginning February 19, 2021 through the suspension of Work period. Contractor will perform all work at request of the SMART District during the suspension of work, if any, on a Force Account basis in accordance with the General Conditions.

- GC7.13 Indemnification – During any temporary shutdown that requires an anticipated suspension of the Work, the indemnification outlined in section GC7.13 shall also be suspended for any damage, loss or injury to anyone, or anything related to the on-going maintenance of the project site. During the temporary shutdown and suspension of the Work, the SMART District shall assume responsibility for the on-going maintenance, safety, and control of the project site.
- GC7.15 Loss or Damage to the Work and Materials – All materials provided for the Contract that have been delivered to the site and received and inspected by Contractor and witnessed as satisfactorily meeting project requirements, documented in accordance with the Contract Documents, and for intended purpose of the benefit of the SMART District. All duty to secure, maintain, periodic inspection/maintenance, protect, and maintenance of protection by Contractor are relieved ~~for~~ of Contractor during the period of suspension.
- GC8.4.4.3 Contractor Responsibility – To be struck in its entirety.
- GC4.9.4 Warranty of Contractor Installed Equipment and Material – During the suspension of Work period, completed work up until the start date of the suspended Work period will be warranted by Contractor in accordance with the General Provisions. Stored uninstalled materials and/or equipment will forego requirements of the General Conditions during the suspension of Work period. Reestablishing the warranty start date for uninstalled materials and/or equipment once installed once work resumes may require additional compensation to extend warranty period to new end date. The Contractor will provide the SMART District a Change Proposal for any such expense.
- GC9.7.1 Retention – Add at end of section: If a suspension order is provided by the SMART District at no fault of Contractor, all retention or those amounts held in escrow pursuant to GC9.7.1.1 shall be released within 30 days of suspension order.

MISCELLANEOUS PROVISIONS.

- To the fullest extent allowed by law, the provisions of this Side Letter Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. SMART District and Contractor acknowledge that they have each contributed to the making of this Side Letter Agreement.
- No Third-Party Beneficiaries. Nothing contained in this Side Letter Agreement shall be construed to create and the SMART District and Contractor do not intend to create any rights in third parties.
- Merger. This writing is intended both as the final expression of this Side Letter Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of this Side Letter Agreement.

DISTRICT:

SONOMA-MARIN AREA RAIL
TRANIT DISTRICT

CONTRACTOR:

STACY AND WITBECK, INC.

By:_____

David Rabbitt, Chair

By:_____

George Furnanz, President & CEO

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT APPROVING CHANGE ORDER 003 TO CONTRACT NO. SYS-DB-18-001 FOR THE DESIGN AND CONSTRUCTION OF THE SYSTEMS COMPONENTS FOR THE WINDSOR EXTENSION

WHEREAS, On October 22, 2018, the SMART District awarded Contract No. SYS-DB-18-001 to Modern Railway Systems, Inc. for the design and construction of Train Control and Communications Systems for the 3-mile extension of the SMART District passenger rail system to the Town of Windsor; and

WHEREAS, On March 16, 2020, the SMART District issued a Limited Notice to Proceed for the Contract.; and

WHEREAS, On October 14, 2020, the SMART District issued a Revised Limited Notice to Proceed for the Contract; and

WHEREAS, The Windsor Extension Project (the “Project”), of which Contract No. SYS-DB-18-001 is an element, includes Regional Measure 3 Bridge Toll Funding (“RM3 Funding”) in the overall budget.; and

WHEREAS, The RM3 Funding has not been released by the funding authority due to lawsuit claiming that the fee is a tax and not a user toll; and

WHEREAS, SMART District is delaying the delivery of additional Notice(s) to Proceed for Contract No. CV-DB-18-001 until the unfunded portion of the Project budget becomes available; and

WHEREAS, The SMART District has prepared Change Order 003 which includes a Side Letter Agreement that temporarily modifies certain Contract No. SYS-DB-18-001 provisions until such time as funding becomes available and District issues a Notice to Proceed for the Contract.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. That the foregoing recitals are true and correct.
2. That Change Order 003 to Contract No. SYS-DB-18-001, a copy of which is attached hereto and incorporated herein as Exhibit “A”, which includes a Side Letter Agreement is hereby approved.

Resolution No. 2021-14
Sonoma-Marin Area Real Transit District
June 2, 2021

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marin Area Rail Transit District held on the 2nd day of June, 2021, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ATTEST:

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

Change Order 003

Contract No.: SYS-DB-18-001

Contract Title: Windsor Extension Project



Issued to: Modern Railway Systems, Inc.
8201 SouthPark Lane, Ste.200
Phone: (720) 542-3325

Change Notice Reference:
N/A

CO Title: Temporary Suspension Side Letter Agreement

The Contract Price due to this CO will change by: \$0.00

The Contract Performance Time due to the CO will be change by: To be determined when Contract work resumes

EXCEPT AS MODIFIED BY THIS CHANGE ORDER, ALL TERMS AND CONDITIONS OF THE CONTRACT, AS PREVIOUSLY MODIFIED, REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT. THE PARTIES AGREE THAT THIS CHANGE ORDER IS A FINAL AND EQUITABLE ADJUSTMENT OF THE CONTRACT TIME AND CONTRACT AMOUNT AND CONSTITUTES A MUTUAL ACCORD AND SATISFACTION OF ALL CURRENT CLAIMS, OF WHATEVER NATURE CAUSED BY OR ARISING OUT OF THE FACTS AND CIRCUMSTANCES SURROUNDING THIS CHANGE ORDER INCLUDING, BUT NOT LIMITED TO, DIRECT, INDIRECT AND CONSEQUENTIAL COSTS; ADDITIONAL TIME FOR PERFORMANCE; AND THE IMPACT OF THE CHANGE SPECIFIED IN THIS CHANGE ORDER, ALONE OR TAKEN WITH OTHER CHANGES, ON THE UNCHANGED WORK.

Description of change:

This Change Order 003 Temporary Suspension – Side Letter Agreement temporarily modifies the certain contract provisions until such time as funding becomes available and SMART issues a Notice to Proceed for the Contract. This no cost change order incorporates the attached Side Letter Agreement into the Contract. Also incorporated with this Change Order 003 is a “Mothball Memo” that documents that status of the project as of the date of this Change Order.

Concurred By:

Concurred By:

Manager of Train Control Systems Date

District Chief Engineer Date

Aaron Parkes

Bill Gamlen

The undersigned agrees to the terms and conditions described herein.

Contractor Acceptance

Sonoma-Marin Area Rail Transit

Title: Project Representative

Title: General Manager

(Authorized Signature for Contractor) Date

(Authorized Signature for Owner) Date

Paul Rieger

Farhad Mansourian

CONTRACT No. SYS-DB-18-001

SIDE LETTER AGREEMENT TO CONTRACT No. SYS-DB-18-001

THIS SIDE LETTER AGREEMENT to CONTRACT No. SYS-DB-18-001 is made and entered into this ____ day of _____, 2021 (the “Side Letter Agreement”), between the SONOMA-MARIN AREA RAIL TRANSIT DISTRICT (the “SMART District”) and MODERN RAILWAY SYSTEMS, INC. (hereinafter referred to as the “Contractor”) to address a temporary suspension of work.

RECITALS

- A. On October 22, 2018, the SMART District and the Contactor executed CONTRACT No. SYS-DB-18-001 for the design and construction of Train Control and Communications systems for the 3-mile extension of the SMART passenger rail system to the Town of Windsor.
- B. On March 16, 2020, the SMART District issued a Limited Notice to Proceed for the Contract.
- C. On October 14, 2020, the SMART District issued a Revised Limited Notice to Proceed for the Contract.
- D. The Windsor Extension Project (the “Project”), of which CONTRACT No. SYS-DB-18-001 is an element, includes Regional Measure 3 Bridge Toll Funding (“RM3 Funding”) in the overall budget.
- E. The RM3 Funding has not been released by the funding authority due to lawsuit claiming that the fee is a tax and not a user toll.
- F. The SMART District is delaying the delivery of additional Notice(s) to Proceed for CONTRACT No. SYS-DB-18-001 until the unfunded portion of the Project budget becomes available.
- G. This Side Letter Agreement between SMART District and Contractor temporarily modifies certain CONTRACT No. SYS-DB-18-001 provisions until such time as funding becomes available and SMART District issues a Notice to Proceed for the Contract.
- H. Except to the extent the CONTRACT No. SYS-DB-18-001 is being temporarily modified pursuant this Side Letter Agreement, CONTRACT No. SYS-DB-18-001, 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 other provisions of CONTRACT No. SYS-DB-18-001.

NOW, THEREFORE, in consideration of the recitals set forth above which are incorporated herein by reference as if fully set forth in the body of this Agreement and the covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the District and Contractor ("Parties") hereto agree as follows:

- GC 7.1.3.5(b) Payroll Records – Contractor shall not be required to submit payroll records, and any other periodic records required by the Contract Documents, during the suspension duration of the non-performance of Work.
- GC7.1.3.6 Claim for Additional Compensation – It is mutually understood and agreed the suspension of Work will cause Work to be delayed is at no fault of Contractor and Contractor will be allowed to request and may receive compensation related to remobilization, inefficiencies, wage increases and material escalation, including fuel, for components of Work that occur once Work restarts to the point in time the Work is Substantially Complete.
- GC7.1.4.1 Design Professional Licensing Laws – It is understood that Contractor can submit and be compensated for reasonable costs incurred because of licensing expired during the suspension of Work that may cause for resealing/restamping of any engineering drawings, specification, submittals, and other work products.
- GC7.1.6 Accessibility – It is understood that the implementation of the design in the field is not complete. Contractor and the SMART District have made attempts to ensure that Work in place generally complies with the General Conditions. Contractor will not have the duty to maintain nor monitor these General Conditions during the time of suspension. Any changes in the law or requirements related to accessibility that impact design or construction will be brought to the attention of the SMART District and submitted as a Change Proposal.
- GC7.3 Payment of Taxes – Contractor will make all payments and address any current tax liabilities related to Work performed prior to suspension date and will not have any duty under this General Condition until work resumes.
- GC7.4 Permits and Licenses – Any suspension, extension and or maintenance of permits or licenses related to work within the Contract deriving out of the suspension of the Contract Work, will be the responsibility of the SMART District.
- GC7.6(a) Safety Reports – it is understood that monthly reporting requirements will be not required during the suspension period.
- GC7.10 Environmental Compliance – It is agreed that Contractor responsibility for onsite conditions is relieved beginning February 19, 2021 through the suspension of Work period. Contractor will perform

all work at the request of the SMART District during the suspension of work, if any, on a Force Account basis in accordance with the General Conditions.

- GC7.13 Indemnification – During any temporary shutdown that requires an anticipated suspension of the Work, the indemnification outlined in section GC7.13 shall also be suspended for any damage, loss or injury to anyone, or anything related to the on-going maintenance of the project site. During the temporary shutdown and suspension of the Work, the SMART District shall assume responsibility for the on-going maintenance, safety, and control of the project site.
- GC7.15 Loss or Damage to the Work and Materials – All materials provided for the Contract that have been delivered to the site and received and inspected by Contractor and witnessed as satisfactorily meeting project requirements, documented in accordance with the Contract Documents, and for intended purpose of the benefit of the SMART District. All duty to secure, maintain, periodic inspection/maintenance, protect, and maintenance of protection by Contractor are relieved of Contractor during the period of suspension.
- GC8.4.4.3 Contractor Responsibility – To be struck in its entirety.
- GC4.9.4 Warranty of Contractor Installed Equipment and Material – During the suspension of Work period, completed work up until the start date of the suspended Work period will be warranted by Contractor in accordance with the General Provisions. Stored uninstalled materials and/or equipment will forego requirements of the General Conditions during the suspension of Work period. Reestablishing the warranty start date for uninstalled materials and/or equipment once installed once work resumes may require additional compensation to extend warranty period to new end date. The Contractor will provide the SMART District a Change Proposal for any such expense.
- GC9.7.1 Retention – Add at end of section: If a suspension order is provided by the SMART District at no fault of Contractor, all retention or those amounts held in escrow pursuant to GC9.7.1.1 shall be released within 30 days of suspension order.

MISCELLANEOUS PROVISIONS.

- To the fullest extent allowed by law, the provisions of this Side Letter Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The SMART District and Contractor acknowledge that they have each contributed to the making of this Side Letter Agreement.
- No Third-Party Beneficiaries. Nothing contained in this Side Letter Agreement shall be construed to create and the SMART District and Contractor do not intend to create any rights in third parties.
- Merger. This writing is intended both as the final expression of this Side Letter Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of this Side Letter Agreement.

DISTRICT:

SONOMA-MARIN AREA RAIL
TRANIT DISTRICT

CONTRACTOR:

MODERN RAILWAY SYSTEMS, INC.

By:_____

David Rabbitt, Chair

By:_____

Paul Rieger, President



June 2, 2021

David Rabbitt, Chair
Sonoma County Board of Supervisors

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

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Damon Connolly
Marin County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Susan Gorin
Sonoma County Board of Supervisors

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Farhad Mansourian
General Manager

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

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

SUBJECT: Marin-Sonoma Bikeshare Pilot Program Draft Coordination Agreement between Sonoma County Transportation Authority (SCTA), Transportation Authority of Marin (TAM), Bolt Mobility, and SMART/Local Jurisdiction Participating Agencies

Dear Board Members:

RECOMMENDATION:

Approval of Resolution No. 2021-15 authorizing the General Manager to negotiate final terms and sign the Draft Coordination Agreement for the Marin-Sonoma Bikeshare Pilot Program as a participating agency and to authorize the Marin-Sonoma Bikeshare Pilot Program operator, Bolt Mobility, the right to operate shared electric bicycles within SMART's jurisdiction.

SUMMARY:

In August 2018, the Metropolitan Transportation Commission (MTC) awarded Sonoma County Transportation Authority (SCTA) and Transportation Authority of Marin (TAM) an \$826,000 Bike Share Capital Program grant for the Marin-Sonoma Bike Share Program along the SMART corridor. Each jurisdiction Participating Agency within Sonoma and Marin counties must enter into the Coordination Agreement to implement the Bike Share Program. The SCTA will act as the fiscal agent, while SCTA and TAM will cooperatively manage the program. Participating jurisdictions include the Cities of Larkspur, San Rafael, Novato, Petaluma, Cotati, Rohnert Park, Santa Rosa, Golden Gate Bridge Highway and Transportation District, and SMART.

The goals of the program include addressing the first/last mile connections for SMART rail riders and, as such, many of the proposed program hubs will be located at or near SMART stations. The program also supports the goals of many of the local jurisdictions within SMART's service area to reduce greenhouse gas emissions and supporting the shift in transportation modes to benefit the climate and support public health benefits.

In April 2020, a Program Agreement was signed by SCTA with Gotcha Mobility LLC as the vendor of the Marin-Sonoma Bike Share Program. The Program Agreement was subsequently reassigned to Bolt Mobility after their acquisition of Gotcha Mobility LLC. Bolt will provide 300 or more electric assist bikes and will establish station hubs for bike share parking throughout the participating jurisdictions.

Station hub locations are being determined through technical analysis, public agency guidance and public input, including through an online survey that was distributed through SMART's media channels along with local jurisdiction partner distribution. The survey was open from February 24 to March 19, 2021, receiving nearly 500 responses.

The SCTA and TAM have been hosting a Bike Share Technical Advisory Working Group comprised of Participating Agency staff, including SMART staff. In addition, Bolt has been working with each participating jurisdiction to determine appropriate sites for hubs within the zones of interest. Hub locations will first be sought in public right-of-way, but private right-of-way may be explored if necessary. Once siting is confirmed, Bolt will develop site plans and obtain right-of-way permits from each participating agency or private property. One of the provisions of the Coordination Agreement is that the Participating Agencies will waive fees for the review and permitting for the initial installations of bike share parking hubs, and any fees for hub deactivations, de-installations, reinstallations or relocations.

Additional public engagement, marketing, and events are planned in the months leading up to the launch of the system.

The pilot program includes a three-year operating period under the program agreement. Once operations begin, Bolt will procure and set up all hardware and software necessary for operations and all bike racks and other parking equipment installed will remain the property of Bolt. Funding for the program comes from the MTC grant, sponsor funding and usage fees. This resolution will allow Bolt to operate a Bike Share program within SMART's jurisdiction on SMART's rights-of-way, as necessary through siting of bike parking and encroachment permits. The Bike Share Program will be fundamentally guided by the Coordination Agreement approved and authorized between Bolt, SCTA, TAM, SMART and all partner jurisdictions.

The pilot program is tentatively set to launch in Fall 2021 after site plans are fully completed this summer between the vendor and partner agencies. The Coordination Agreement specifies that the Pilot Period of the program will run until April 14, 2025. Bolt will receive revenue from ridership and will pursue sponsorships, with the goal of building a program that is self-sustaining without additional public funding after the pilot.

FISCAL IMPACT: No direct fiscal impact to SMART beyond staff time to support the program. There may be possible fiscal benefits to SMART with increased ridership due to provision of additional first/last mile options for accessing the railroad.

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

Very truly yours,

 /s/
Joanne Parker
Programming and Grants Manager

Attachment(s):

- 1) Resolution No. 2021-15
- 2) Draft Marin-Sonoma Bike Share Program Coordination Agreement

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT AUTHORIZING THE GENERAL MANAGER TO NEGOTIATE FINAL TERMS AND ENTER INTO AN INTERAGENCY COORDINATION AGREEMENT SUPPORTING OPERATIONS OF THE MARIN-SONOMA BIKE SHARE PILOT PROJECT

WHEREAS, in August 2018, the Metropolitan Transportation Commission (MTC) awarded the Sonoma County Transportation Authority (SCTA) and Transportation Authority of Marin (TAM) an \$826,000 Bike Share Capital Program grant for the Marin-Sonoma Bike Share Program; and

WHEREAS, SMART recognizes the ongoing need to facilitate multiple first- and last-mile transportation options connecting passengers to SMART's rail stations and services, including facilitating private and shared bicycle options; and

WHEREAS, SMART along with the cities of Santa Rosa, Rohnert Park, Cotati, Petaluma, Novato, San Rafael, Larkspur and the Golden Gate Bridge Highway and Transportation District ("Participating Agencies") have been working with SCTA and TAM to implement the pilot program; and

WHEREAS, through a qualifications-based procurement process, SCTA, TAM and the Participating Agencies selected Bolt Mobility to operate the Marin-Sonoma Bike Share Program utilizing grant funding and at no direct cost to SCTA, TAM and Participating Agencies; and

WHEREAS, SCTA, TAM and the Participating Agencies and Bolt Mobility have negotiated a draft agreement establishing roles and responsibilities for implementation of the Marin-Sonoma Bike Share Program.

NOW, THEREFORE, BE IT RESOLVED BY THE Board of Directors of the SMART District as follows:

1. SMART's General Manager is hereby authorized and directed to negotiate final terms and execute the Coordination Agreement between SCTA, TAM, Bolt Mobility and Participating Agencies to implement the Marin-Sonoma Bike Share Pilot Program.
2. SMART authorizes Bolt Mobility to operate shared electric bicycles within SMART's jurisdiction during the pilot period as specified in the Coordinating Agreement.
3. SMART's General Manager or designee is authorized to sign all required permits for installation of designated bike share parking and other documents related to the operation and expansion of the Marin-Sonoma Bike Share Program on behalf of SMART.

4. All permitting fees for installation of hubs and operations during the pilot period, as specified in the Coordinating Agreement are hereby waived.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 2nd day of June, 2021, 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

COORDINATION AGREEMENT

between

**THE SONOMA COUNTY TRANSPORTATION AUTHORITY,
THE TRANSPORTATION AUTHORITY OF MARIN,
BOLT MOBILITY, as Operator of the Marin-Sonoma Bike Share Program, and
PARTICIPATING AGENCIES**

for

THE MARIN-SONOMA BIKE SHARE PROGRAM

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**COORDINATION AGREEMENT
FOR THE MARIN-SONOMA BIKE SHARE PROGRAM**

This Coordination Agreement for the Marin-Sonoma Bike Share Program (hereinafter, this “Agreement”) has been executed and delivered as of _____ (the “Effective Date”) by and between the SONOMA COUNTY TRANSPORTATION AUTHORITY (SCTA) and the TRANSPORTATION AUTHORITY OF MARIN (TAM) as the “**Coordinating Agencies**,” BOLT MOBILITY, as the “**Operator**” of the Program (as defined in the recital below), and the entities names in Appendix A collectively referred to as the “**Participating Agencies**.” SCTA, TAM, Operator and each of the Participating Agencies is referred to herein as a “**Party**” and collectively as the “**Parties**.”

RECITALS

On February 10, 2020, following negotiations with Operator, SCTA Board authorized SCTA’s Executive Director or designated representative to enter into a contract with Operator. On April 13, 2020, SCTA and Operator executed an agreement, which provides for the creation and operation of a bike share pilot program (“Program”) in the jurisdictions of each Participating Agency listed in **Appendix A** of this Agreement.

The Parties therefore agree as follows:

PURPOSE

The purpose of this Agreement is to establish the certain rights, liabilities, and responsibilities of each Party with respect to the Program, and to define the organizational, management, and operational structure for the successful development of the Program.

SECTION 1.0 DEFINITIONS

- 1.1. "Agreement" has the meaning given such term in the Preamble.
- 1.2. "Bicycle" shall mean a Class 1 electric assist vehicle with pedals and with 2 wheels held in a frame and aligned one behind the other and steered with a handle bar, consistent with the California Vehicle Code, Division 1, Section 312.4(a)(1) definition of a "class 1 electric bicycle." "Bicycle" shall not include motorized vehicles, including scooters or mopeds.
- 1.3. "Claims" has the meaning given such term in Section 10.0.
- 1.4. "Continued Program" shall mean the continuation of the bike share Program after the end date of the Pilot Period.
- 1.5. "Coordinating Agencies" has the meaning given such term in the Preamble.
- 1.6. "Deactivation" shall mean designation of a Hub as "Out of Service" on the Program website, app, and all other real-time data sources.
- 1.7. "De-Installation" shall mean, at a minimum, (i) the temporary or permanent full removal of the Hub and its associated Street Treatments, and, (ii) the designation of the Hub as "Out of Service" on, or removal of the Hub from, the Program website, app, and all other real-time data sources.
- 1.8. "Dispute Resolution Process" has the meaning given such term in Section 22.1.
- 1.9. "Effective Date" has the meaning given such term in the Preamble.
- 1.10. "Equipment" shall include, Racks, Bicycles, Hub Signage, Street Treatments, rebalancing vehicles, and any hardware required for operations of the system either individually or in any combination thereof.
- 1.11. "Executive Directors" shall mean the Executive Directors of SCTA and TAM.
- 1.12. "Hub" shall mean elements that may include, but are not limited to, signage, map module, a variable number of Parking Spaces, including Bicycle Racks and/or Virtual Hubs, and when applicable, Street Treatment(s) and Street Markings.
- 1.13. "Hub Adjustment" shall mean any changes to Site configuration from the permitted Site Plan.
- 1.14. "Indemnified Party" and "Indemnified Parties" have the meaning given such terms in Section 9.
- 1.15. "Infill" shall mean the placement of additional Racks within the Service Area in order to address unmet demand or community request.
- 1.16. "Initial Meeting Date" has the meaning given such term in Section 22.0.
- 1.17. "Installation Scheduling Permits" shall mean permits required for the scheduling of the installation of Hub-related Equipment at Sites proposed for Racks for which a Site Permit has been issued as a check for conflicts with other activities at the same location.
- 1.18. "Jurisdiction" means a) for cities, all real property within the incorporated territory of such city; b) for special districts, all real property over which they have an ownership or leasehold interest.

- 1.19. "Liabilities" has the meaning given such term in Section 9.2.
- 1.20. "Operator" has the meaning given such term in the Preamble. The term "Operator" shall also include the permitted successors and assigns of the Operator named herein.
- 1.21. "Parking Space" shall mean one designated parking space for bike share bicycles designated by Bicycle Racks or Virtual Hubs.
- 1.22. "Participating Agency" and "Participating Agencies" have the meaning given such terms in the Preamble and are listed in Appendix A.
- 1.23. "Party" and "Parties" have the meaning given such terms in the Preamble.
- 1.24. "Person" shall mean any human being or any association, firm, partnership, joint venture, corporation, limited liability company, governmental entity, or other legally recognized entity, whether for profit or not for profit.
- 1.25. "Pilot Period" shall mean a duration of three years from the first date of Program operations plus any agreed upon extensions ending no later than April 13, 2025.
- 1.26. "Pilot Program Participating Agencies" shall include the following agencies: City of Santa Rosa, City of Rohnert Park, City of Cotati, City of Petaluma, City of Novato, City of San Rafael, City of Larkspur, Sonoma-Marín Area Rail Transit, Golden Gate Bridge Highway and Transportation District.
- 1.27. "Program" shall include operations of a public bike sharing system in which bicycles are made available to individuals for short-term rentals through a membership and shared mobility platform, and include the size and distribution of Bicycles, Racks, Hubs, other Equipment for the Pilot Period.
- 1.28. "Program Density" shall mean the distribution of Parking Spots within the Service Area.
- 1.29. "Public Entity Parties" shall mean SCTA, TAM and the Participating Agencies.
- 1.30. "Public Safety Emergency" shall mean an instance when:
 - 1.30.1. Equipment is damaged or in an unsafe state so as to present an immediate danger to the public; or
 - 1.30.2. Circumstances or situations surrounding Equipment create an imminent danger to the public; or
 - 1.30.3. The area around a Hub becomes unsafe; or
 - 1.30.4. A Participating Agency determines, in its sole discretion or pursuant to any authority the Participating Agency has under law, that it is necessary to respond to exigent circumstances, an emergency or to otherwise protect public health and safety, including, without limitations, in instances of a natural disaster or to avoid a calamity.
- 1.31. "Rack" shall mean a modular bicycle rack designated for locking and storing bike share bicycles.

- 1.32. "Service Area" shall mean the geofenced areas designated through development of the Program to confine the area in which bicycles may be parked.
- 1.33. "Services" shall mean the Operator's installation, operation and maintenance of the Racks and the acquisition, placement, maintenance, and rental to users of the Bicycles.
- 1.34. "Shared Mobility Device User" shall mean a Person who has set up a user account and agreed to the terms and conditions to participate in the bike share Program.
- 1.35. "Site" shall mean a designated area on publicly or privately owned real property, for which a Site Permit has been issued and which area contains a Hub.
- 1.36. "Site Permits" shall mean any and all permits required by a Participating Agency for the installation, maintenance, and operation of Hub-related Equipment at Sites proposed for Racks (other than Installation Scheduling Permits or Special Traffic Permits).
- 1.37. "Site Plan" shall mean a scaled plan view of the Site, illustrating existing surface features and proposed improvements and meeting the requirements given such term in Section 14.
- 1.38. "Software" shall mean the software required to operate the Equipment.
- 1.39. "Special Traffic Permit" shall mean a permit required if installation of Hub-related Equipment will temporarily interfere with pedestrian, bicycle, transit or vehicular traffic in a material respect during installation.
- 1.40. "State" means the State of California.
- 1.41. "Street Marking(s)" shall mean thermoplastic paint markings and/or striping on the pavement for the express purpose of demarcating a Hub.
- 1.42. "Street Treatments" shall mean the three-dimensional objects used to demarcate the Hub, and protect it from adjacent parking and moving traffic. Such objects may include, but are not limited to, delineators and wheel stops.
- 1.43. "Street Treatment Requirements" shall mean a Participating Agency's requirements with respect to Street Treatments.
- 1.44. "Technical Advisory Working Group" has the meaning given such term in Section 4.
- 1.45. "Term" has the meaning given such term in Section 2.
- 1.46. "Trip" shall mean the use of a Bicycle from one Hub to another Hub or back to the initial Hub.
- 1.47. "Underperforming Hub" shall mean a Hub for which Hub Usage is less than 0.5 Trips per bike per day over a twelve-month period of operations, excluding days that the Hub is Deactivated or temporarily De-Installed.
- 1.48. "Virtual Hubs" shall mean designated bicycle parking using Street Markings and Street Treatments in place of Bicycle Racks.

SECTION 2.0 TERM OF THE AGREEMENT

- 2.1. The Term of this Agreement begins on the Effective Date and will continue through the end of the Pilot Period and no later than April 13, 2025.
- 2.2. Notwithstanding any other provision of this Agreement, a Participating Agency shall have the right, in its sole discretion, with or without cause to terminate that Participating Agency's participation in this Agreement by giving 90 days written notice to the Operator and Coordinating Agencies in accordance with the Notice provisions in this Agreement.

SECTION 3.0 COSTS

- 3.1. Except as otherwise expressly provided for in this Agreement, each Participating Agency shall bear its own costs in connection with the Program, if such costs are applicable, including, but not limited to, costs incurred in connection with: negotiating this Agreement; Site selection; the review required for issuance of permit to operate, Site Permits, Special Traffic Permits and other permits; Site preparation; exercising enforcement, inspection and audit rights; and marketing, to the extent that Coordinating Agencies and/or the Participating Agencies choose to undertake marketing or outreach.
- 3.2. Except as otherwise provided in Sections 3.3 and 3.4, Program Participating Agencies shall not be obligated, during the Pilot Period, to pay or bear any of the costs associated with or expenses incurred for the Equipment, Software, or Services; including installation, operations and maintenance.
- 3.3. Should a Pilot Program Participating Agency desire a Continued Program beyond the Pilot Period, and/or add to the Bicycles and Equipment in the Program, such Participating Agencies shall be responsible for negotiating directly with the Operator and securing funds to pay for any cost required for leasing, purchasing, installing, maintaining and operating the Equipment within their respective Jurisdictions.
- 3.4. Any Participating Agency, other than those named in the Program Participating Agencies, may elect, to extend or expand the Program within the borders of its Jurisdiction by adding Equipment provided that such Participating Agency shall be responsible for negotiating directly with the Operator and securing funds to pay for any cost required for leasing, purchasing, installing, maintaining and operating the Equipment within their respective Jurisdictions.
- 3.5. This Agreement shall not be interpreted to create any form of joint powers authority among any of the participating Parties. Nothing in this Agreement authorizes any Party to incur any debts, liabilities, or obligations on behalf of another Party unless expressly set forth herein.

SECTION 4.0 TECHNICAL ADVISORY WORKING GROUP

- 4.1. The Coordinating Agencies and the Participating Agencies agree to participate in a Technical Advisory Working Group for staff to coordinate regarding activities of the Program and provide non-binding advice on various Program elements.

- 4.2. The Technical Advisory Working Group will consist of one designated staff representative from each of the Coordinating Agencies, and one designated staff representative from each of the Participating Agencies. Each Party with a designated representative may appoint an alternate representative that will have full voting rights as the representative. The Coordinating Agency representatives will serve as co-chairs of the Technical Advisory Working Group.
- 4.3. The Technical Advisory Working Group will meet as needed through Program development and ongoing.
- 4.4. The Technical Advisory Working Group representatives shall endeavor to work toward agreement on various decisions regarding the development and implementation of the Program. In the case that the Technical Advisory Working Group cannot reach agreement on a particular issue, any representative may request a vote.
- 4.5. A Party shall convey all communications and documents intended for the Technical Advisory Working Group through that Party's designated representative. The Technical Advisory Working Group shall convey all communications and documents intended for a Party to that Party's designated representative.
- 4.6. New Participating Agencies, other than the initial Pilot Program Participating Agencies, may be added to this Coordination Agreement by amending Appendix A. Such Participating Agencies would become members of the Technical Advisory Working Group upon the effective date of an amendment to the Agreement.

SECTION 5.0 RESPONSIBILITIES OF COORDINATING AGENCIES

- 5.1. Coordinating Agencies shall:
 - 5.1.1. Serve as the Program administrators;
 - 5.1.2. Organize and facilitate Technical Advisory Working Group meetings by, for example:
 - 5.1.2.1. Determining designated representative availability for meetings;
 - 5.1.2.2. Providing notice of meetings;
 - 5.1.2.3. Coordinating multi-jurisdictional marketing and promotions of the system with the Participating Agencies and Operator as needed; and
 - 5.1.2.4. Distributing materials and information as required;
 - 5.1.3. Serve as the fiscal agent for the Program;
 - 5.1.4. Maintain records of the Program and its operation; and
 - 5.1.5. Provide system data to the Participating Agencies on a regular basis.

SECTION 6.0 RESPONSIBILITIES OF THE PARTICIPATING AGENCIES

- 6.1. For property within its Jurisdiction, each Participating Agency shall:
 - 6.1.1. Provide the Operator reasonable access to that Participating Agency's public right of way for usage of installing/operating bike share parking Hubs in convenient and visible

locations, which may include existing on-street parking spaces, sidewalk furniture zones, and/or unutilized loading zones. Such locations shall be mutually agreed upon by Operator and the Participating Agency, subject to that Participating Agency's laws, regulations and policies governing use of the Participating Agency's right of way, and to all applicable State and federal laws and regulations, including but not limited to, applicable State and federal accessibility laws and regulations;

- 6.1.1.1. Work in good faith with Operator to issue any Site Permits for locations mutually agreed upon by Participating Agency and Operator, and any other necessary permits, leases, or licenses for implementing the Program, subject to that Participating Agency's requirements for issuing such permits, except as otherwise provided in Section 13.0;
- 6.1.1.2. Provide to the Operator all local requirements for traffic markings and devices necessary during the installation of Hubs for on-street locations pursuant to this Agreement;
- 6.1.1.3. Provide for CEQA compliance for that Participating Agency's activities under the Program;
- 6.1.1.4. Provide Coordinating Agencies semi-annually with a summary of local efforts and activities regarding local bicycle share, which summary shall also include data on efforts made by the Participating Agencies to inform the public of the Program, comments made by the public to the Participating Agencies on the Program, and the response of the Participating Agencies to such comments; and
- 6.1.1.5. Notify Operator promptly of any reports to the Participating Agency of any issues prohibiting use of the Program.
- 6.1.2. Notify Operator promptly of any reports to the Participating Agency of public nuisances or hazards caused by the Program.
- 6.1.3. Notify Coordinating Agencies and Operator promptly of any public emergencies affecting the Program. If the designated representative of a Participating Agency determines that a Public Safety Emergency exists, such Participating Agency shall promptly notify Operator's designated representative so that Operator may take such action necessary to address such emergency, including, but not limited to, removing, replacing, relocating, reinstalling or locking all or any portion of the Equipment and having repair and restoration work performed. In the case of a public emergency requiring the immediate removal of Equipment, Participating Agency may relocate Equipment and notify Operator as soon as such communication is practical.

SECTION 7.0 DATA SHARING

- 7.1. Coordinating Agencies shall make available to the Participating Agencies monthly reports from Operator.

SECTION 8.0 REALLOCATION OF EQUIPMENT

- 8.1. If, within or leading up to the Pilot Period, any Participating Agency fails to deliver the required Site Permits or other permits, leases, or licenses to provide for the initial number of Racks identified for their respective Jurisdiction within 60 calendar days from the date of a complete application for a Site Permit, Coordinating Agencies retain the right to work with Operator to reallocate the amount of Equipment that has not been timely permitted for installation to another Participating Agency. Participating Agencies may submit a written request to Coordinating Agencies for an extension if there are unique circumstances warranting extended time for review.

SECTION 9.0 INSURANCE

- 9.1. Operator shall maintain commercial general liability insurance coverage with a carrier doing business in California, with limits not less than one million dollars (\$1,000,000) for each occurrence for bodily injury or property damage, including contractual liability, personal injury, and product liability and completed operations, and not less than five million dollars (\$5,000,000) aggregate for all occurrences during the policy period. The insurance shall not exclude coverage for injuries or damages caused by Operator to the Shared Mobility Device User. Each Participating Agency and Coordinating Agency shall be named as additional insureds on the Operator's certificate of insurance.

SECTION 10.0 INDEMNIFICATION

- 10.1. To the extent Operator is not required to indemnify the Public Entity Parties, each Public Entity Party shall indemnify the other Public Entity Parties, their officers, commissioners, agents and employees from and against all claims, injury, suits, demands, liability, losses, and damages (including all costs and expenses in connection therewith), incurred by reason of any negligent or otherwise wrongful act or omission of the indemnifying Public Entity Party, its officers, commissioners, agents, employees, or any of them, under or in connection with this Agreement. The indemnifying Public Entity Party further agrees to defend any and all such actions, suits, or claims arising from the indemnifying Public Entity Party's negligence or otherwise wrongful act or omission and pay all reasonable charges of attorney's fees and all other costs, expenses, settlements, or judgments arising therefrom or incurred in connection therewith.
- 10.2. Operator shall defend, indemnify, and save harmless the Coordinating Agencies, the Participating Agencies, and their respective commissioners, council members, officers, agencies, departments, agents, and employees (each, an "Indemnified Party"; and collectively, "Indemnified Parties") from and against any and all claims, demands, causes of action, proceedings or lawsuits brought by third-Parties ("Claims"), and all losses, damages, liabilities, penalties, fines, forfeitures, costs and expenses arising from or incidental to any Claims (including attorneys' fees and other costs of defense) (collectively, with Claims, "Liabilities"), resulting from, or arising out of, this Agreement, the operation of the Program and the provision of Services, whether such operation or Services is performed or provided by Operator or by Operator's subcontractors or any other Person acting for or on behalf of Operator.

- 10.3. Notwithstanding the foregoing, Operator's indemnification and defense obligations contained in the preceding paragraph shall not include:
- 10.3.1. Any Liabilities to the extent resulting from, or arising out of:
- 10.3.1.1. the gross negligence or willful misconduct of any Indemnified Party;
- 10.3.1.2. Operator complying with the written directives or written requirements of a Participating Agency, if Operator has previously objected to such written directives or requirements in writing, with respect to (A) the location or configuration of any Hub in relation to the street or sidewalk on which such Hub is located or to which it adjoins, or (B) a Participating Agency's Street Treatment Requirements; or
- 10.3.1.3. the condition of any public property outside of the perimeter of a Hub and not otherwise controlled by Operator (and expressly excluding from this clause (c) the condition of the Bicycles or other Equipment).
- 10.4. If any Claim against Operator includes Claims contesting a Participating Agency's authority to issue a permit for a Hub, then each Party shall be responsible for its own defense against such Claims proportional to the Party's share of the Claim.
- 10.5. Upon receipt by any Indemnified Party of actual notice of a Claim to which such Indemnified Party is entitled to indemnification in accordance with this Agreement, such Indemnified Party shall give prompt notice of such Claim to the indemnitor. The indemnitor shall assume and prosecute the defense of such Claim at the sole cost and expense of indemnitor with Counsel reasonably acceptable to the Indemnified Party. The indemnitor shall conduct the defense, and may settle such claim upon the approval of the Indemnified Party, which shall not be withheld where the settlement only involves the payment of monetary obligations and provides for an unconditional release of the Indemnified Party, does not involve an admission of liability or any settlement terms that may prejudice the Indemnified Party in subsequent litigation, and would not obligate the Indemnified Party to exercise any governmental power or take further action as a condition of settlement.

SECTION 11.0 OTHER PROVISIONS

- 11.1. Nothing in this Agreement is intended to expand or limit the existing authority of any signatory.
- 11.2. This Agreement may not be modified, or the Term extended, except by written instrument executed by each of the Parties to this Agreement.
- 11.3. Each Party represents and warrants that it has the right, power, and authority to execute this Agreement. Each Party represents and warrants that it has given any and all notices, and obtained any and all consents, powers and authorities, necessary to permit it, and the Persons executing this Agreement for it, to enter into this Agreement.
- 11.4. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

- 11.5. Subject to the requirement that disputes be addressed in accordance with the Dispute Resolution Process, each Party hereby submits to the of any State or federal court sitting in Sonoma County, California, or Marin County, California, over any suit, action or proceeding arising out of or relating to this Agreement. Except for mandatory transfers of venue provided for in Code of Civil Procedure section 394, each Party hereby irrevocably waives, to the fullest extent permitted by law, any objection it may now or hereafter have to such venue as being an inconvenient forum. Notwithstanding the foregoing, with respect to any dispute arising out of or relating to this Agreement in which the sole Parties are and remain the Participating Agencies and Operator, and/ or between Operator and Coordinating Agencies, each such Party hereby irrevocably submits to the jurisdiction of any State or federal court sitting in Sonoma County or Marin County, California.
- 11.6. Should any Party employ an attorney for the purpose of enforcing or construing this Agreement, or any judgment based on this Agreement, in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, the prevailing Party shall be entitled to receive from the other Party or Parties thereto reimbursement for all reasonable attorneys' fees and all costs, including but not limited to service of process, filing fees, court and court reporter costs, investigative costs, expert witness fees and the cost of any bonds, whether taxable or not, and such reimbursement shall be included in any judgment, decree or final order issued in that proceeding. The "prevailing Party" means the Party in whose favor a judgment, decree, or final order is rendered.
- 11.7. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. This Agreement shall be binding upon the receipt of facsimile or scanned signatures, or signatures processed through an electronic signature provider like AdobeSign or DocuSign.
- 11.8. If any provision of this Agreement is deemed invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.
- 11.9. This Agreement is not intended for the benefit of any Person or entity not a signatory to this Agreement and is not enforceable by any third Party.
- 11.10. Any terms of this Agreement that by their nature extend beyond the Term (or termination) of this Agreement shall remain in effect until fulfilled, and shall apply to all Parties' respective successors and assigns.

SECTION 12.0 NOTICES

- 12.1. All notices, demand, requests or reports under this Agreement shall be in writing and shall be sufficiently given if sent by registered or certified mail, return receipt requested, by electronic mail (email), by overnight mail, or by personal delivery, in each case to the addresses listed below, or to such other locations or Persons as any Party may designate in writing from time to time by sending a notice to the other Parties in accordance with this Section 12.0. Any notice, demand or request shall be deemed given on the date of receipt or rejection by the intended recipient.

To SCTA:
Executive Director
Suzanne Smith
411 King Street, Santa Rosa, CA 95404
Email: Suzanne.smith@scta.ca.gov

To TAM:
Executive Director
Anne Richman
900 Fifth Avenue, Suite 100
San Rafael, CA 94901
Email: ARichman@tam.ca.gov

To GOTCHA MOBILE HOLDING, LLC:

CEO

Ignacio Tzoumas
Email: ignacio@micromobility.com

To each Participating Agency, using the contact information listed in **Appendix A**

SECTION 13.0 PERMITTING

- 13.1. Operator will work with Participating Agencies to develop a Site Plan outline that can be applied to Site Permit applications for each individual Participating Agency.
- 13.2. Each Participating Agency will specify requirements for submitting applications for Site Permits, Installation Scheduling Permits and Special Traffic Permits, and any other approvals that might be required by that Participating Agency, including drawings, photos, surveying and required paperwork. The Participating Agency will provide an estimate of the time needed to obtain such permits.
- 13.3. Operator, and/or an outside planning and siting firm hired by Operator, will participate in the permitting process for each Participating Agency.
- 13.4. Each Public Entity Party agrees to waive all of its applicable permitting fees for Site Permits, Installation Scheduling Permits, Special Traffic Permits or other permits for initial installations of Hubs.
- 13.5. Each Public Entity Party agrees to waive all of its applicable permit fees for Deactivations, De-Installations, reinstallations or relocations requested by utilities, the Participating Agency or other public agencies.
- 13.6. Each Public Entity Party agrees to waive all of its applicable permitting fees for operations during the Pilot Period.

- 13.7. Nothing in this Agreement shall be construed as a waiver of any local law, rule or regulation of each Participating Agency or of each Participating Agency's right to require Operator to secure the appropriate permits or authorizations for Equipment installation on public sites.

SECTION 14.0 SITE PLANS ON PUBLIC PROPERTY

- 14.1. In connection with the submission of an application for a Site Permit for a Site on public property, Operator shall provide maps and/or photographs of such Site along with a Site Plan for approval by the applicable Participating Agency. No Hub on public property may be installed, re-installed or adjusted absent approval by the applicable Participating Agency of the Site Plan for such Hub and obtaining all applicable Site Permits required by such Participating Agency.
- 14.2. A Site Plan for Parking Spaces on public property shall conform with all elements and dimensions relevant to the Operator's siting needs and local requirements, including but not limited to Street Treatment Requirements, relevant utilities, doorways, street and sidewalk widths, relevant obstructions, latitude and longitude.
- 14.3. All work on public property performed by the Operator must conform to the Site Plan approved in connection with the issuance of a Site Permit and all other requirements of the Participating Agency.
- 14.4. In the event that changes to the Site Plan as so approved are required at the time of installation or Adjustment, Operator shall obtain written approval from the applicable Participating Agency for the necessary changes prior to such installation or Adjustment and provide such Participating Agency with an updated Site Plan reflective of the Hub's actual, approved and installed condition within 30 days of such installation or Adjustment.

SECTION 15.0 INFILL SITE SELECTION PROCESS

- 15.1. Infill siting may be desired after initial Site Plans are approved and may be required in, but not limited to, the following situations:
- 15.1.1. Operator approved Infill to address unmet demand,
 - 15.1.2. Operator approved Infill to address a request of the community or a Participating Agency.
- 15.2. Infill Siting proposals shall be reviewed initially by the Participating Agency where the Infill Siting is proposed, the Coordinating Agencies, and Operator. This process will include the Participating Agency and Operator meeting to review proposed sites in the area where Infill siting is desired and obtaining any necessary permits.

SECTION 16.0 PARKING, OPERATION, AND MAINTENANCE

- 16.1. Parking for Bicycles withing the system will be in Hubs and must:
- 16.1.1. Be accessible to the public 24 hours per day, 365 days per year, except in cases of special events or temporary construction; and, by mutual agreement of a Participating

Agency and Operator, Parking Spaces may be located in areas with less than 24 hour per day, 365 days per year access; and

- 16.1.2. Be located on sidewalks, streets, parks, other Participating Agency-owned property, other public property owned by public agencies or other public entities other than each Participating Agency, or private property.

16.2. Operation

- 16.2.3. Real-time System Information - Operator will provide a system to track Bicycles and station occupancy status. Operator will populate an interactive map with location and real-time status of Bicycles throughout Service Area along with optional address and directions, and transit information.
- 16.2.4. Customer Service - Operator will provide responsive and customer-friendly Services that encourage repeat use, including timely response to complaints. At a minimum, system users should be able to report system comments and complaints to Operator using a telephone hotline, a system website with a comment form or email address, and via Program smart-phone apps. All system Equipment shall contain a conspicuously posted telephone number and instructions for filing a complaint.
- 16.2.5. Call Center - Operator shall provide to Coordinating Agencies, Participating Agencies, all subscribers, and the public at large, a telephone number for Operator's call center. The call center shall be in continuous operation 24 hours per day, 7 days per week, and 365 days per year. Operator shall conspicuously post a notice on each bike and online advising the general public that they may direct their questions, complaints, and comments to the Operator's call center. Operator shall ensure that the call center can handle calls in English and Spanish using operators fluent in those languages. The operators at the call center shall be fully competent and knowledgeable to answer questions and provide information concerning, among other things, subscription process, subscription prices, billing, crashes, comments, complaints, malfunction problems, location of Stations, direction to the nearest Station that has Bicycles available for use and/or available parking for returns. The call center manager shall be knowledgeable about all the Service Areas. The call center operators shall keep accurate and complete written records of each such call in a Customer Service Log as hereinafter required, including the primary reason for each call and the status of the call (e.g., "no further action", "requires reimbursement").
- 16.2.6. E-mail Response Time - Not less than 95% of emails to Operator's public information email address must be responded to within 1 business day.
- 16.2.7. System Balancing - Operator will monitor the location of each Bicycle and, if applicable, the status of each parking location. Operator will continuously and predictably redistribute Bicycles so that the system provides users with consistent availability of bikes throughout the Service Area and consistent availability of spaces in which to park a Bicycle at the end of a Trip. Operator shall respond to and relocate, retrieve, or remove any misparked Bicycles. Consistent redistribution will occur based on usage patterns to ensure equally balanced Hubs.

16.3. Maintenance

16.3.8. Operator will regularly inspect, maintain and repair Equipment to keep the system and the Bicycles in continuous compliance with all local regulations, partner contracts (e.g. property owner agreements, sponsor agreements, etc.) and warranty requirements. System maintenance shall include preventive maintenance, inspection and prompt repair or replacement of all system hardware and Software elements including but not limited to terminals, signs, Bicycles, Bicycle components, concrete or asphalt beneath stations if mutually agreed upon by Parties. It will also include inspecting, cleaning and removing graffiti from system structures on a timely basis, as well as removal of debris in and around the system structures.

SECTION 17.0 HUB DEACTIVATION, RELOCATION, DE-INSTALLATION, REINSTALLATION, AND ADJUSTMENT

- 17.1. Hub Deactivations as requested by a Participating Agency, may be done on a temporary basis with a minimum of 15 days' notice to the Operator and Coordinating Agencies with a request for a specific time for Deactivation and Reactivation; provided, however, that Hub Deactivation in the case of emergency or danger to public health is not subject to the advance notice requirement.
- 17.2. Operator shall reactivate a Hub within 24 hours after the temporary need for Hub Deactivation. Hub Deactivations for Public Safety Emergencies shall be reactivated within 72 hours after the end of the emergency condition, as determined by the affected Participating Agency or Cities.
- 17.3. All Adjustments from the initial Hub installations shall meet the requirements of this Agreement, unless otherwise agreed to in writing by Operator and the applicable Participating Agency.
- 17.4. Any Adjustments to accommodate changing conditions must be agreed upon by the applicable Participating Agency, Coordinating Agencies, and Operator.
- 17.5. Operator shall have the right to adjust or relocate Underperforming Hubs after consulting the Technical Advisory Working Group to ensure the overall distribution meets the Program requirements and adequate notification to the public is made, and Operator obtains a permit for the new location mutually agreed upon by the applicable Participating Agency, Coordinating Agencies, and Operator.
- 17.6. If Operator requests to permanently relocate a Hub, Operator shall:
 - 17.6.1. Produce metrics to assess the existing Hub's productivity. Metrics may include, but are not limited to overall Program Density and geographic extent, Hub Usage, maintenance reports, and history of public comments; and
 - 17.6.2. Provide the Participating Agency with a minimum of 3 months of metric data and any resulting analysis supporting the proposed Hub relocation.

- 17.7. Operator, after consulting with the applicable Participating Agency, shall conduct any necessary planning, design, outreach, and permit process prior to any Hub Relocation, Deactivation, De-installation, or Adjustments.
- 17.8. Upon termination of the Program or a termination of Participating Agency's participation in the Program, Operator shall remove all Equipment in the affected Jurisdiction(s) within 15 days of the date the Operator received notification.
- 17.9. Nothing in this Agreement shall be construed as a waiver or release of the rights of each Participating Agency in and to its own property or its regulatory authority.
- 17.10. Operator shall maintain a fee schedule for any fees charged to Participating Agencies for De-Installations, reinstallations, adjustments, and temporary relocations at the request of the Participating Agency. The fee for Hub De-Installation shall cover the cost of relocating the Hub on a temporary basis and the cost of reinstalling the Hub. Operator shall provide the fee schedule to Participating Agencies within five business days of any update. Operator may not charge fees for Hub De-Installations, or Hub Adjustments related to public works, public safety emergencies, or relocation of a Hub at the election of the Operator. Operator may not charge fees for temporary Hub Deactivations requested by Participating Agencies. Operator fees as of March 2021 are provided below.

Action	Cost (Rack-Based Hub)	Cost (Virtual Hub)	Notes
Deinstallation	\$1,000 per Hub with 10 bike racks (or less)	\$500 per 10-bike (or smaller) Virtual Hub	Includes cost of relocating the Hub on a temporary basis and the cost of reinstalling the hub
Adjustment	\$200 per Hub with 10 bike racks (or less)*	\$100 per 10-bike (or smaller) Virtual Hub	Ex. Adding or removing bike racks at an existing Hub location; expanding or shrinking the footprint of an existing Virtual Hub location *Note: Additional station equipment is not included in this rate, but available for purchase if racks being adjusted are not reallocated from another Hub location

SECTION 18.0 NOTIFICATIONS REGARDING HUB DEACTIVATION, RELOCATION, DE-INSTALLATION, REINSTALLATION, ADJUSTMENT, AND SERVICE INTERRUPTIONS

- 18.1. Except for any situation involving an immediate threat to public health, safety or welfare as determined in the sole discretion of the Participating Agency, any requests from a Participating Agency for Hub Deactivation, Hub Installation, De-installation, or Hub Adjustment must be sent to Operator and Coordinating Agencies in writing with a minimum of 15 days' notice prior to the requested date. Any such notice shall include a proposed schedule for each location for all

instances of Hub Deactivation, Hub Installation or Hub Adjustment required. In the event that the Participating Agency determines that there is a need for Hub Deactivation, Hub Installation or Hub Adjustment in order to address an immediate threat to public health, safety or welfare, the Participating Agency shall notify Operator as soon as possible and shall work with Operator to try to identify an alternative Site.

- 18.2. Operator must confirm the schedule, in writing, with its plans for each instance at least 4 days before the action occurs.
- 18.3. Operator will provide notice to Coordinating Agencies, Participating Agencies, and members of any temporary, foreseeable, service interruptions or temporary closures of the bike share system or Hub Deactivation with at least 24 hours' notice.

SECTION 19.0 MERCHANDISING, LICENSING, AND INTELLECTUAL PROPERTY

- 19.1. If Operator and/or any of its affiliates, business partners or sublicensees desires to use, during the Term, the trademarks, logos, service marks, and other intellectual property rights of Coordinating Agencies and/or the Participating Agencies, then prior to any such use, Operator and its affiliates, business partners, and sublicensees, as applicable, shall request permission for such use and, in the event such permission is granted, shall enter into a non- exclusive license agreement with Coordinating Agencies and/or any of the Participating Agencies to use, during the Term, such trademarks, logos, service marks, and other intellectual property rights.

SECTION 20.0 MARKETING

- 20.1. Participating Agencies shall cooperate with Coordinating Agencies and Operator in execution of the outreach and marketing plan. Participating Agencies shall be available to review and contribute to the development and maintenance of a master contact list for outreach to stakeholders.

SECTION 21.0 RESERVED TO THE PARTICIPATING AGENCIES

- 21.1. The Participating Agencies hereby withhold authorization from the Coordinating Agencies to make any and all of the following decisions or take any and all of the following actions:
 - 21.1.1. The decision to approve or deny any required permit and/or impose any fees;
 - 21.1.2. The decision to require the Operator to undertake any Hub-Deactivation(s), De-Installation(s), Re-Installment(s), or Adjustment(s);
 - 21.1.3. The decision to determine an immediate threat to the public health, safety or welfare in that Participating Agency's Jurisdiction;
 - 21.1.4. The decision to expand the Program within the borders of a Participating Agency unless otherwise approved by the Participating Agency; and
 - 21.1.5. Any other exercise of the municipal police power not otherwise enumerated above.

- 21.2. Decisions and actions to be taken by a Participating Agency under this Agreement are expressly and specifically reserved to such Participating Agency.

SECTION 22.0 RESOLUTION OF DISPUTES BETWEEN OPERATOR AND THE PARTICIPATING AGENCIES UNDER THIS AGREEMENT

- 22.1. In the event of a dispute between or among Operator and/or Coordinating Agencies and/or a Participating Agency or Agencies arising under this Agreement or with respect to the Program, such dispute shall be addressed and resolved as follows (the “Dispute Resolution Process”):

22.1.1. Coordinating Agencies’ Program Managers and Participating Agency’s Program Managers, as applicable, assigned to the Program and Operator’s General Manager of the Program, or their respective delegates, shall meet, within 10 days after receipt by disputing Party(ies) of notification from the other Party(ies) of such dispute, to negotiate in good faith in order to try to resolve such dispute (the date of the first such meeting, or the expiration of such 10-day period if the meeting is not timely held, being the “Initial Meeting Date”). If such Persons fail to resolve such dispute within 15 days after the Initial Meeting Date, then the Executive Directors of SCTA, TAM and/or the equivalent executive-level personnel of the Participating Agency, as applicable, and the CEO of Operator shall meet promptly and negotiate in good faith in order to resolve such dispute. If such Persons fail to resolve such dispute within 30 days after the Initial Meeting Date, then such dispute shall be subject to mediation under Section 22.2. As used in this Section 22.1, a meeting may be held in Person, by conference call or by video conference. By agreement of all Parties to such dispute, any of the deadlines set forth in this Section 22.1 may be extended or shortened. The process described in this Section 22.1 shall be confidential and treated as a compromise negotiation for purposes of federal and State rules of evidence.

- 22.2. Upon the completion of the process in Section 22.1, the Parties may agree to engage in mediation to be administered by the American Arbitration Association (the “AAA”) in accordance with its Commercial Rules, or similar service. A request for mediation shall be made in writing, delivered to the other disputing part(ies) and filed with the applicable mediation service. Any disputing Party may submit such a request. The disputing Parties shall share the mediator’s fee and any filing fees equally. The mediation shall be held in Marin or Sonoma Counties as the Parties may otherwise agree. The disputing Parties shall be represented by individuals of their choosing. The mediation process shall be confidential and treated as a compromise negotiation for purposes of federal and State rules of evidence.
- 22.3. If mediation fails to resolve a dispute, then the exclusive forum for resolving such dispute shall be any State or federal court sitting in Marin County, California or in Sonoma County, California except as otherwise provided in the last sentence of Section 10.5.

SECTION 23.0 ASSIGNMENT BY OPERATOR

- 23.1. Operator has the right to assign this Agreement, including the rights, benefits and obligations of Operator hereunder to a successor entity who acquires Operator, in whole or in part. In such case, successor entity shall automatically succeed to Operator's interest under this Agreement. This Agreement shall be binding upon and inure to the benefit of the Operator named herein and the respective permitted successors and assigns of the Operator named herein.

APPENDIX A

IN WITNESS WHEREOF, this Agreement has been executed by the Parties hereto.

SONOMA COUNTY TRANSPORTATION AUTHORITY (SCTA) (Contact Signature)

TRANSPORTATION AUTHORITY OF MARIN (TAM) (Contact Signature)

CITY OF SANTA ROSA (Contact Signature)

CITY OF ROHNERT PARK (Contact Signature)

CITY OF COTATI (Contact Signature)

CITY OF PETALUMA (Contact Signature)

CITY OF NOVATO (Contact Signature)

CITY OF SAN RAFAEL (Contact Signature)

CITY OF LARKSPUR (Contact Signature)

SONOMA-MARIN AREA RAIL TRANSIT (SMART) (Contact Signature)

GOLDEN GATE BRIDGE HIGHWAY AND TRANSPORTATION DISTRICT (GGBHTD) (Contact Signature)

BOLT MOBILITY (Contact Signature)



June 2, 2021

David Rabbitt, Chair
Sonoma County Board of Supervisors

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

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Damon Connolly
Marin County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Susan Gorin
Sonoma County Board of Supervisors

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Farhad Mansourian
General Manager

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

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

SUBJECT: Approval of the Fiscal Year 2021-22 Budget, Annual Appropriation Limit, and Investment Policy

Dear Board Members:

RECOMMENDATIONS:

Adopt Resolution 2021-11 for the Fiscal Year (FY) 2021-22 Budget and Resolution 2021-12 for the Annual Appropriation Limit

SUMMARY:

Last month, the draft FY 2021-22 was presented. A summary of the budget is included in Appendix A of the budget document. It includes both revenues and expenditures. It also includes audited actual revenues and expenditures for FY 20. We have also included the FY 21 amended budget that was approved by the Board in February 2021. There have been a few minor adjustments since the Board approval that have been reflected in this document. These are Board adopted budgeted numbers and do not reflect actual or estimated expenditures. Actual expenditures for FY 21, can be found in the Monthly Financial Report. Once the FY 21 financials are closed, we will prepare a budget to actual comparison at that time. The last column in the summary is the proposed budgeted for FY 22.

Since last month only two changes have been made:

- Fares have been reduced
- The cost of the Puerto Suello to North San Pedro pathway feasibility study has been reduced from \$100,00 to \$30,000

SMART passengers pay for their rides using the fare structure approved by the SMART Board in 2015 and 2016. SMART participates in the regional Clipper fare system that allows riders to transfer seamlessly among Bay Area operators using one fare media card. SMART also has its own mobile ticket device that provides for easy purchasing of multiple or discounted tickets without purchasing a Clipper card. The fares are based on the distance travelled by a rider which is like other commuter rail services.

Prior to May 24, 2021, daily fares ranged from \$3.50 for a non-discounted adult travelling one zone, and \$11.50 if travelling 5 zones. SMART also provides several discounts available to SMART riders such as a youth, senior, low income, and passengers with disabilities.

Effective May 24, 2021, fares were lowered from \$3.50 to \$1.50 for a non-discounted adult travelling one zone, and \$7.50 if travelling 5 zones.

In addition, a new "Weekend Day Pass" will be implemented on June 5, 2021. The Weekend Day Pass is \$10.00 for adults and \$5.00 for seniors, youth, passengers with disabilities, and low-income passengers. The Weekend Day Pass offers unlimited rides for the entire day.

Beginning in September 2021, the 31-day pass will be \$135.00 for adults and \$67.50 for youth, seniors, and passengers with disabilities. Clipper does not offer the low-income fare on a monthly pass.

One Way Fare						
	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Daily Max
	Promotional Fare	Promotional Fare	Promotional Fare	Promotional Fare	Promotional Fare	Promotional Fare
Adult Fare	\$ 1.50	\$ 3.00	\$ 4.50	\$ 6.00	\$ 7.50	\$ 15.00
Seniors, youth, low-income, and passengers with disabilities (50%)	\$ 0.75	\$ 1.50	\$ 2.25	\$ 3.00	\$ 3.75	\$ 7.50

It is estimated that the fare reduction will reduce revenues by approximately \$500,000 in FY 22. This figure will change based on ridership. The \$500,000 will come out of the \$5 million set aside for these initiatives in the Board approved capital plan. The new FY 22 ending fund balance is now estimated to be \$23 million.

Puerto Suello to North San Pedro Pathway

We have received the actual cost estimate for the study, and it came in at \$30,000 significantly below our initial estimate of \$100,000. The cost will be split \$15,000 SMART and \$15,000 the City of San Rafael.

Investment Policy

Included in the FY 2021-22 budget is the investment policy. It can be found in Appendix D. It is unchanged from FY 2020-21.

Appropriation Limit

The appropriation limit has been calculated consistent with Article XIII B of the California Constitution. The limit for FY 2021-22 has been calculated to be \$152,544,355. Our actual expenditures are going to be significantly below this limit.

Very truly yours,

/s/

Heather McKillop
Chief Financial Officer

Attachment(s): FY 2021-22 Budget Resolution Nos 2021-11 and 2021-12
FY 2021-22 Budget Document

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT, STATE OF CALIFORNIA, ADOPTING AN ANNUAL BUDGET FOR FISCAL YEAR 2021-22, PROVIDING FOR THE ESTABLISHMENT OF NEW DISTRICT EMPLOYEES PURSUANT TO PUBLIC UTILITIES CODE SECTIONS 105050 AND 105052(b) AND FIXING THE COMPENSATION AND SALARY OF ALL DISTRICT EMPLOYEES FOR FISCAL YEAR 2021-22, ADOPTING A STATEMENT OF INVESTMENT POLICY FOR FISCAL YEAR 2021-22, AND DELEGATING AUTHORITY TO INVEST CERTAIN FUNDS UNDER THE CONTROL OF THE BOARD OF DIRECTORS TO THE CHIEF FINANCIAL OFFICER

WHEREAS, Section 8.01 of Article VIII of the Administrative Code of the Sonoma-Marín Area Rail Transit District (“SMART”) requires that the Board of Directors (“Board”) adopt an annual budget for the ensuing fiscal year no later than the District’s June meeting; and

WHEREAS, a preliminary Annual Budget for Fiscal Year 2021-22 was prepared by the Chief Financial Officer and presented to the Board at its May 19, 2021 meeting; and

WHEREAS, the preliminary Annual Budget for Fiscal Year 2021-22 has been available for public inspection since May 14, 2021, in excess of the minimum 10-day public inspection period prescribed by the Administrative Code; and

WHEREAS, at its duly noticed meetings on May 19, and June 2, the Board fully reviewed and considered the Annual Budget for Fiscal Year 2021-22, at which time all interested persons were given the opportunity to hear and be heard; and

WHEREAS, at its meetings on May 19, and June 2, the Board duly considered the creation of employee positions and the fixing of the compensation and salary for those newly created positions as well as the adjustment of the compensation and salary of some existing positions; and

WHEREAS, certain non-cash transactions such as the recording of donated assets and depreciation do not require appropriation authority and are not included in the annual budget but must be recorded during the preparation of financial statements for each fiscal year; and

WHEREAS, administrative and accounting adjustments and corrections which are necessary to move funds or expense in accordance with accepted accounting practice may be necessary and do not require appropriation authority for each fiscal year; and

WHEREAS, California Government Code Section 53607 authorizes the Board to delegate to the Chief Financial Officer the authority to invest certain funds of SMART on deposit with the County of Sonoma Treasury for up to one year; and

WHEREAS, included in the delegation of authority for investments is the authority to transfer funds between accounts in order to maximize investment returns for the District; and

WHEREAS, upon such delegation the Chief Financial Officer assumes full responsibility for those transactions until the Board revokes this authority or does not renew the annual delegation by resolution; and

WHEREAS, nothing in this resolution limits the Chief Financial Officer's authority pursuant to Government Code Sections 53635 and 53684; and

WHEREAS, all investments are reported monthly to the Board of Directors as required by Government Code Section 53646; and

WHEREAS, California Government Code Section 53646 requires that the Chief Financial Officer annually submit a statement of investment policy to the Board for its review and approval; and

WHEREAS, the Chief Financial Officer presented and the Board duly considered the Statement of Investment Policy for Fiscal Year 2021-22 at a noticed public meeting of the Board of Directors on June 2, 2021.

NOW, THEREFORE, BE IT RESOLVED that the Fiscal Year 2021-22 Annual Budget for the Sonoma-Marín Area Rail Transit District attached hereto is hereby approved.

BE IT FURTHER RESOLVED that the funding for this Final Budget is being provided to SMART by way of Measure Q sales tax, fare revenue, state operating support, federal funds, and reimbursements from grants from the State of California revenues, among other funds, all as more fully described in the Fiscal Year 2021-22 Annual Budget.

BE IT FURTHER RESOLVED that based upon competent evidence and acting pursuant to the provisions of the Enabling Legislation, the salaries, wages, compensation and expenses for management and non-management employees for Fiscal Year 2021-22 shall be as provided for also in Appendix B, SMART Position Authorizations, and such compensation shall be compensation in full for all official services performed by such managers and employees, unless expressly provided otherwise.

BE IT FURTHER RESOLVED that the Chief Financial Officer is authorized to complete any necessary budgetary and accounting transfers and adjustments to implement the adopted FY 2021-22 Budget and to re-establish valid prior year encumbrances. Such adjustments shall include but not be limited to decreasing appropriations in any and all funds associated with projects initiated prior to the 2021-22 fiscal year-end to meet actual available resources. Authority includes budgetary and accounting adjustments necessary to assign year-end actual fund balances, and increasing or decreasing appropriations for previously approved projects,

operations and maintenance expenses and budgetary and accounting adjustments necessary to assign actual fund balances.

BE IT FURTHER RESOLVED that the Chief Financial Officer is authorized to complete any administrative or accounting adjustments necessary for the proper presentation of the District's financial statements that are in accordance with the Board's Direction and approval of the Budget, including noncash adjustments for depreciation and recording donated assets.

BE IT FURTHER RESOLVED that, in accordance with the provisions of Government Code Section 53646, the Statement of Investment Policy for Fiscal Year 2021-22 attached hereto as Appendix D is hereby approved and adopted.

BE IT FURTHER RESOLVED that, pursuant to Government Code Section 53607, the Board of Directors hereby delegates to the Chief Financial Officer the authority to create and maintain accounts as necessary for management of the District's funds, including the ability to invest and reinvest funds in the Sonoma County Treasury for a period of one year and to create accounts as required by State of California for deposit of grant funds.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marin Area Rail Transit District held on the 2nd day of June, 2021, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ATTEST:

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

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT,
STATE OF CALIFORNIA, DECLARING AND RATIFYING THE APPROPRIATION LIMIT FOR FISCAL YEAR
2020-21**

WHEREAS, Article XIII B of the California Constitution (“Article XIII B”) places various limitations on the appropriations of the State of California and local public agencies; and

WHEREAS, Article XIII B requires the Sonoma-Marín Area Rail Transit District (“SMART”) to set an annual appropriations limit based on factors which include the appropriations limit for the prior fiscal year, population growth (if any), and inflation; and

WHEREAS, SMART’s annual appropriations limit was first set at \$100,000,000 for Fiscal Year 2008-09 with the passage of Measure Q; and

WHEREAS, SMART approved subsequent annual appropriations limits as required by law; and

WHEREAS, the information supporting these adjustments is attached hereto as Exhibit A; and

WHEREAS, the information used to make these calculations for SMART was made available for public inspection in SMART’s offices on May 14, 2021 and has been available for at least 15 days prior to the scheduled adoption of this resolution, in accordance with the requirements of California Government Code section 7910.

NOW, THEREFORE, BE IT RESOLVED that the foregoing recitals are true and correct.

BE IT FURTHER RESOLVED that the Appropriations Limit for SMART FISCAL YEAR 2021-22 shall be \$152,544,355.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 2nd day of June, 2021, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

EXHIBIT A
CALCULATION OF SMART APROPRIATION LIMITS

FISCAL YEAR	2019-20	2020-21	2021-22
BEGINNING LIMIT	\$137,563,577	\$142,288,336	\$146,414,925
PER CAPITA INCREASE IN COST OF LIVING	1.0385	1.0373	1.0573
POPULATION CHANGE	0.9960	0.9920	0.9854
POPULATION FACTORS USED*	TOTAL SONOMA COUNTY	TOTAL SONOMA COUNTY	TOTAL SONOMA COUNTY
TOTAL	\$142,288,336	\$146,414,925	\$152,544,355

* Per Government Code §7901, special districts located in two or more counties, such as SMART, may choose to use the change in population for the portion of the district which has the highest assessed valuation.

Fiscal Year 2021-22 Annual Budget
Sonoma-Marín Area Rail Transit District
June 2, 2021



SONOMA~MARIN

SMART

AREA RAIL TRANSIT

5401 Old Redwood Hwy, Ste 200
Petaluma, CA, 94954

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Sonoma-Marin Area Rail Transit District's Board of Directors

SMART is governed by a 12-member Board consisting of elected officials appointed as specified in AB 2224: two county supervisors each from Marin and Sonoma counties, three appointed City Council members from each county and two representatives from the Golden Gate Bridge District.

David Rabbitt – Chair Sonoma County Board of Supervisors	Barbara Pahre – Vice Chair Golden Gate Bridge 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
Debora Fudge Sonoma County Mayors and Councilmembers Association	Patty Garbarino Golden Gate Bridge District
Susan Gorin Sonoma County Board of Supervisors	Daniel Hillmer Marin County Council of Mayors and Councilmembers
Eric Lucan Transportation Authority of Marin	Chris Rogers Sonoma County Mayors and Councilmembers Association

About SMART

The Sonoma Marin Area Rail Transit (SMART) District was established by the California Legislature through the enactment of AB 2224 in 2002. The SMART District includes both Sonoma and Marin Counties and was created for the purpose of providing unified and comprehensive structure for the ownership and governance of passenger and freight rail system within Sonoma and Marin Counties and to provide passenger and freight train service along the existing publicly owned railroad right-of-way.

SMART passenger rail service began in August of 2017 with two-way passenger train service on 43 miles to 10 stations between Downtown San Rafael in Marin County and Airport Boulevard in Sonoma County.

Train service is provided in state-of-the-art diesel multiple unit (DMU) rail vehicles utilizing one of the first Positive Train Control systems for passenger rail. Prior to the COVID-19 shutdown, service was provided roughly every 30-minutes during commute hours with additional service midday and weekends. In late 2019, two new stations were built in Downtown Novato and Larkspur near the regional Ferry to San Francisco. These two stations in Marin County brought rail service to its current total of 45 miles with 12 passenger stations. SMART also manages 16 miles of an ancillary bicycle/pedestrian pathway on its right of way connecting to the Project's stations where cyclists can find secure parking at the station or on-board the train for their bikes.

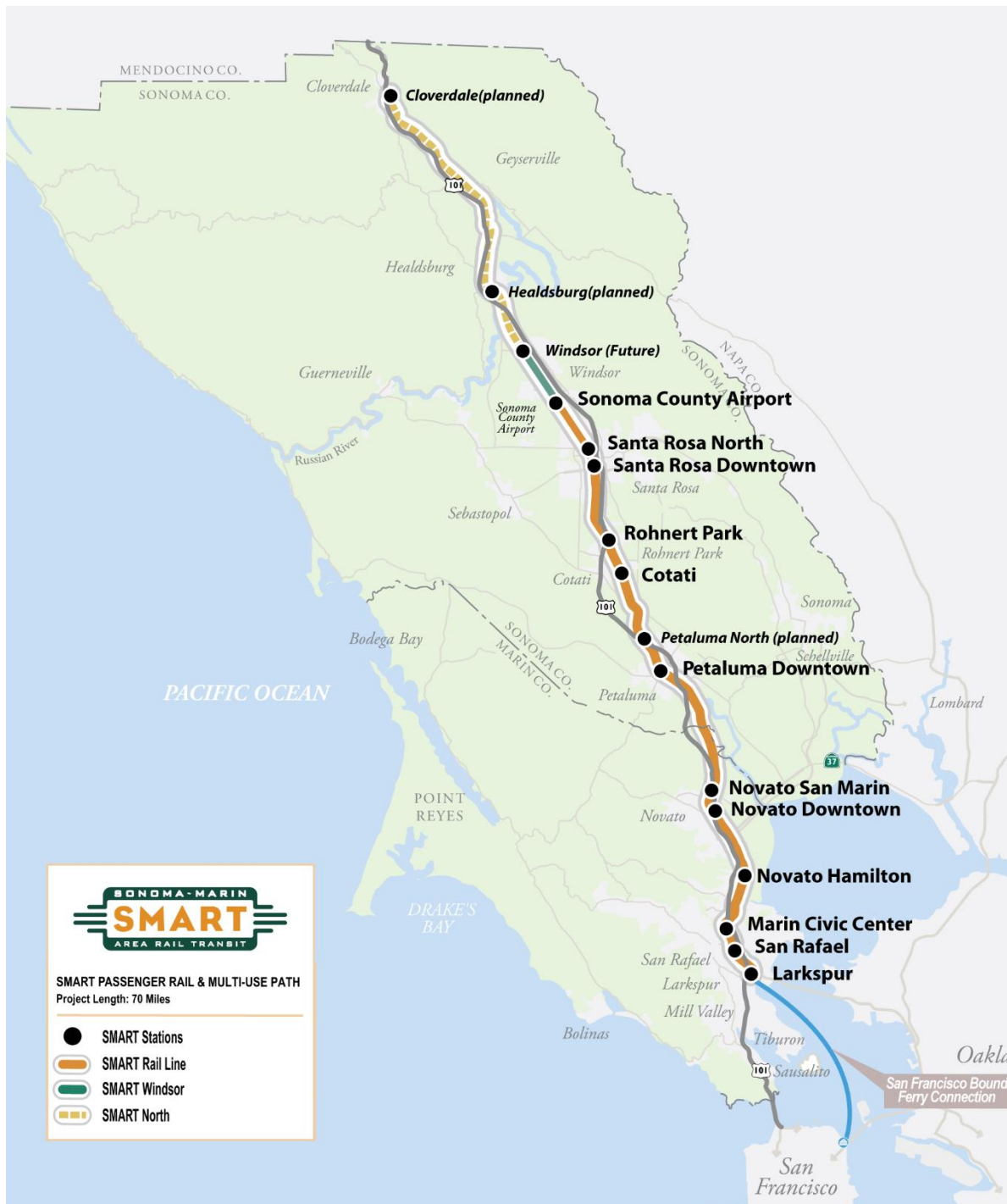
SMART's History

2002	SMART was created by the California Legislature
2008	SMART's ¼ cent sales tax was passed
August 2017	Service Started between San Rafael and Santa Rosa Airport to include 34 trips/ weekday and 10 trips/ weekend
October 2017	Tubbs Fire
August 2018	1 st Anniversary of the start of service
November 2018	Camp Fire
February 2019	Flooding
August 2019	2 nd Anniversary of the start of service
October 2019	Kincade Fire
January 2020	Larkspur Extension Opens. Service increases to 38 trips/ weekday
March 2020	COVID-19 Shelter-in-Place Orders go into effect. Trips reduced to 16 trips/ weekday and no weekend service

August 2020	3 rd Anniversary of the start of service
August 2020	LNU Lighting Complex Fires
March 2021	Marin County Progresses to the Orange Tier
April 2021	Sonoma County Progresses to the Orange Tier

SMART's System

SMART currently has 45 miles of commuter rail and has completed 24 miles of pathway connecting users to its 12 stations.



System Statistics

- Forty-five (45) miles rail corridor – connecting the Larkspur Ferry to the Sonoma County Airport
- Twenty-four (24) miles of pathway providing a first/ last mile connection to the rail corridor
- Twelve (12) stations
- Four (4) park-n-ride lots
- Sixty-eight (68) public crossings
- Twenty -seven (27) bridges
- Two (2) tunnels
- Fleet of 18 Diesel Multiple Units (DMUs)

SMART Overview

The last two fiscal years have been challenging. First in January 2020, SMART opened the Larkspur extension and the downtown Novato Station. Ridership and farebox collections were at an all-time high. Within a few months, the entire landscape had changed. COVID-19 brought with it unprecedented uncertainty both in revenues and ridership. Both FY 20 and FY 21 were a time of service and expenditure reductions. In FY 22, we are looking towards the future, bringing back service, riders, and implementation of the recently approved Capital Plan.

In FY 21, SMART moved forward with two major initiatives. The first is the development of performance measures for SMART and the second was the Capital Plan.

Performance Measures

In FY 21, SMART looked at developing performance measures to help the agency move from just reporting data to measuring performance. After several meetings with the Board of Directors, the following measures were determined to be the ones that the agency should focus on in the near term.

Derived Metrics from the National Transit Database (NTD)

- Operating Expense per Vehicle Revenue Mile (Cost Efficiency)
- Operating Expense per Passenger Mile (Cost Effectiveness)
- Passenger Trips per Vehicle Revenue Mile (Service Efficiency)
- Average Fare per Passenger (Cost Effectiveness)

In addition, the following measures will be developed around pathway usage, on-time performance, and customer experience. Funds have been set aside in the FY 22 budget to further develop these measures and provide funding for data collection.

Capital Plan

In April of 2021, the SMART Board of Directors adopted the Capital Plan. The Capital plan assumed there would be \$46.6 million available between FY 22 and FY 29. The \$46.6 million would be allocated based on the Board adopted expenditure principles which are:

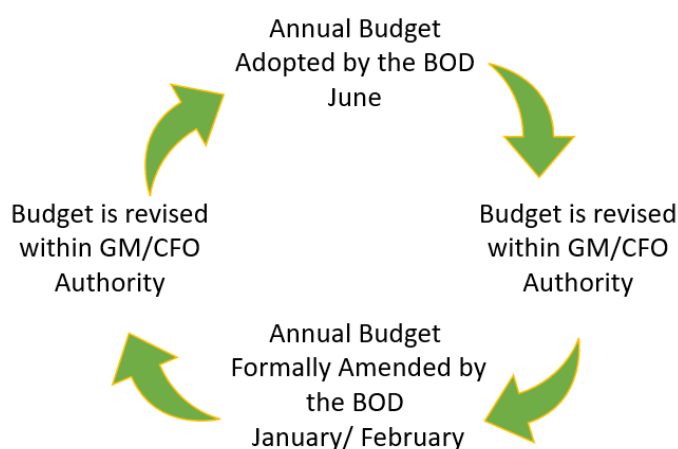
- Provide for ongoing operations and maintenance of the current system
- Prioritize safety and security maintenance and improvements
- Capital projects

Based on those principles, \$20.2 million was allocated for ongoing operations and maintenance of the existing system and safety and security maintenance and improvements between FY 22 and FY 29. Five (5) million dollars was set aside for possible fare policy changes and first/ last mile initiatives. The remaining \$21.4 million will be used to fund design, environmental, permitting, construction, and provide match for grants.

As was mentioned previously, FY 20 and FY 21 were challenging. Service and administrative reductions were prevalent, and funding was very uncertain. The FY 22 budget provides for a time of rebuilding and bringing back service and ridership. Although funding sources are not certain, the trends show a more positive outlook for sales and use tax collections, SMART's largest funding source.

Budget Cycle

The Administrative Code of SMART, as adopted by the Board of Directors in July 2013, provides that the Board of Directors will adopt an annual budget no later than the District's June meeting for the ensuing fiscal year.



The budget outlines the expected revenues and expenditure amounts needed for salaries, benefits, services, supplies, capital and other necessary spending throughout the fiscal year. The budget limits the total amount of total expenditures that can be incurred without further Board approval.

In the event that total expenditures need to be increased, a budget amendment can be presented to the Board of Directors for approval.

Mid-year, an amended budget will be presented to the Board of Director for approval. The amended budget will included the most recent expectations for revenues and expenditures projected through fiscal year end.

Budget adjustments can be made and approved by the Chief Financial Officer as long total expenditures in the Board adopted budget are not exceeded.

At the end of each fiscal year once the financial audit has been finalized, a comparison of the previous year's budget to actual expenditures will be generated and presented to the Board of Directors for information.

Basis of Budgeting

The District's financial statements are reported using the accrual basis of accounting. Revenues are recorded when earned and expenses are recorded when a liability is incurred regardless of the timing of related cash flows. Sales taxes are recorded when earned and reported as non-operating revenue. Grants and similar items are recognized as revenue as soon as all eligibility requirements imposed by the provider have been met.

The District's budget is prepared on a modified accrual basis with the following exceptions:

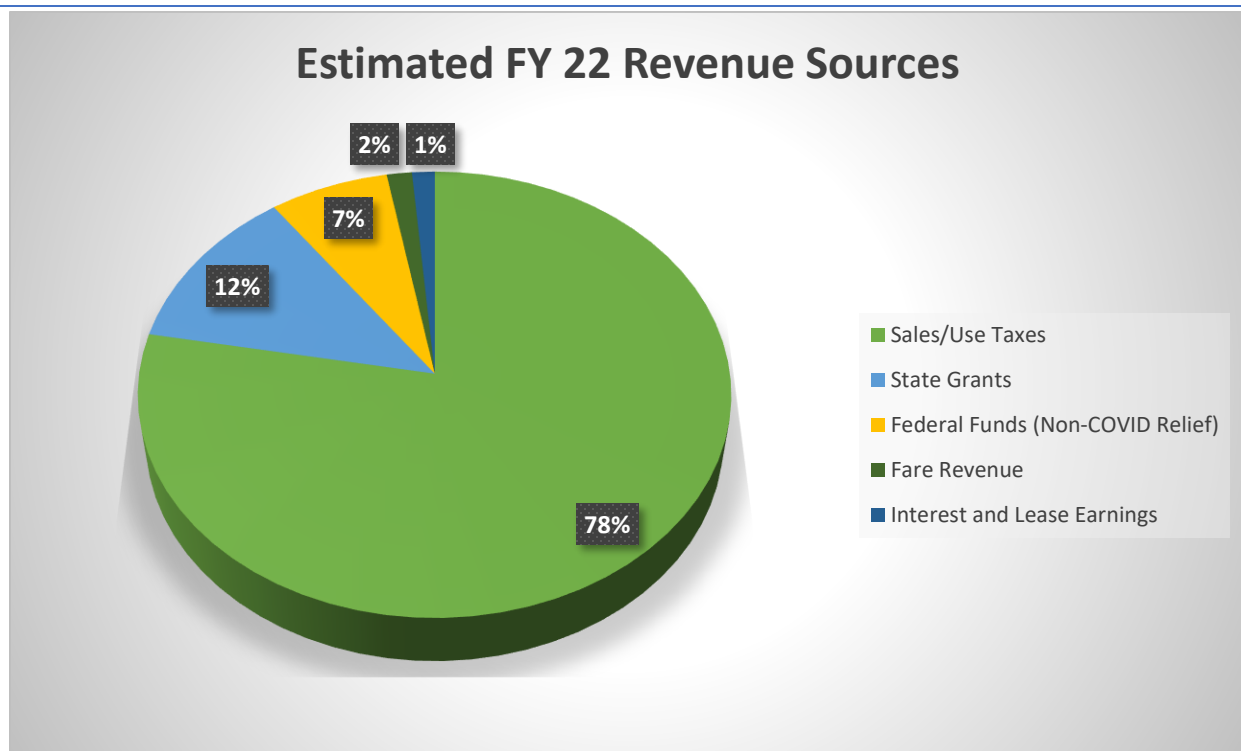
- Inclusion of capital outlays and debt principal payments as expenditures
- Inclusion of asset sale proceeds and debt issuance proceeds
- Exclusion of gains and losses on disposition of property and equipment
- Exclusion of the non-cash portion of long-term unfunded pension accruals

Fund Structure

SMART reports its financial activity as one enterprise. We have one fund, the general fund, with several subfunds for purposes of segregating expenditures.

Fund	Description
01	General Fund
02	Bond Fund
03	Bond Reserve Fund
08	General Reserve Fund
15	Self-Insurance Fund
18	OPEB Pension Fund
20	Equipment Replacement Fund
30	Landing Way Replacement Fund
40	Freight Services
50	Capital Projects Fund

Revenues



		FY 2019-20	FY 2020-21	FY 2021-22
		FINAL ACTUALS	APPROVED AMENDED BUDGET PLUS ADJUSTMENTS	PROPOSED BUDGET
Budgeted Revenue				
1	Sales/Use Taxes	39,784,110	39,133,000	42,074,000
2	Interest and Lease Earnings	1,238,993	738,700	732,665
3	Miscellaneous Revenues	931,087	105,000	30,000
4	Fare Revenue	3,090,457	655,525	811,050
5	Parking Revenue	50,368	25,000	27,000
6	State Grants	27,828,105	20,204,131	6,546,727
7	State Grants - Freight (Fund 40)	-	6,000,000	-
8	Charges For Services	189,184	80,000	57,500
9	Federal Funds (Non-COVID Relief)	2,609,220	7,394,025	3,843,733
10	Federal Funds (COVID Relief)	8,058,183	8,684,064	-
11	Other Governments/ Misc.	5,442,759	8,957,193	15,000
12	Measure M	22,632	157,348	-
13	Total All Revenues	\$ 89,245,098	\$ 92,133,986	\$ 54,137,675

Sales Tax

On November 4, 2008, more than two-thirds of the voters in Sonoma and Marin counties approved Measure Q implementing the 2008 Measure Q Sales Tax. The 2008 Measure Q Sales Tax is a sales and use tax of one quarter of one percent (1/4%) imposed for a period of 20 years beginning April 1, 2009 on the gross receipts from the sale of all tangible personal property sold at retail businesses in the counties and a use tax at the same rate on the storage, use, or other consumption in the counties of such property purchased from any retailer for storage, use or other consumption in the counties, subject to certain exceptions.

SMART HISTORICAL SALES TAX COLLECTIONS

Fiscal Year	SMART Sales Tax Rate	SMART Total Sales Tax Revenue	% Change
2010	0.25%	\$ 24,059,929	
2011	0.25%	\$ 26,826,843	11.50%
2012	0.25%	\$ 28,303,501	5.50%
2013	0.25%	\$ 30,435,753	7.53%
2014	0.25%	\$ 32,473,329	6.69%
2015	0.25%	\$ 33,845,426	4.23%
2016	0.25%	\$ 34,776,012	2.75%
2017	0.25%	\$ 36,061,895	3.70%
2018	0.25%	\$ 37,135,476	2.98%
2019	0.25%	\$ 41,241,140	11.06%
2020	0.25%	\$ 38,978,630	-5.49%

State Revenues

SMART receives formula allocation from four (4) state revenue program itemized below. SMART may receive other state grants but those are received on an application bases, are project specific, and are typically one-time allocations.

- **State Transit Assistance:** SMART also receives State Transit Assistance (STA) funds. A portion of the revenues derived from the sales tax on diesel fuel purchases and registration fees is appropriated by the State Legislature to the State Transit Assistance Program (“STA”) for public transportation purposes. These STA revenues are allocated to public transit agencies throughout the State based on population and operating revenues through a formula that has changed in recent years but was clarified and solidified in 2017 following the passage of AB 1113 (Bloom), signed into law by Governor Brown in July 2017. In addition, the State of Good Repair (SGR) Program provides funding annually transit operators in California for eligible transit maintenance, rehabilitation, and capital projects
- **State Rail Assistance:** One of the new funding sources created by SB 1 is the State Rail Assistance (SRA) program. SRA directs a 0.5% portion of new diesel sales tax revenue for

allocation: half to the five (including, Altamont Corridor Express Authority (ACE), North County Transit Development Board (Coaster), Peninsula Corridor Joint Powers Board (Caltrain), Sonoma-Marin Area Rail Transit District (SMART), Southern California Regional Rail Authority (Metrolink) commuter rail providers and half to intercity rail corridors.

- State Local Partnership Program: SB 1 created the Local Partnership Program which continuously appropriates funding annually from the Road Maintenance and Rehabilitation Account to local and regional transportation agencies that have sought and received voter approval of taxes or that have imposed fees, which taxes or fees are dedicated solely for transportation improvements.
- Low Carbon Transit Operations Program (LCTOP): LCTOP was created to provide operating and capital assistance for transit agencies to reduce greenhouse gas emission and improve mobility, with a priority on serving disadvantaged communities. Approved projects in LCTOP will support new or expanded bus or rail services, expand intermodal transit facilities, and may include equipment acquisition, fueling, maintenance and other costs to operate those services or facilities, with each project reducing greenhouse gas emissions.

Federal Revenues

SMART is a direct recipient of Federal Transit Administration (FTA) Funds.

- 5307 Funds: FTA Urbanized Area Formula Funds which can be used for capital projects operating assistance, job access and reverse commute projects and transportation related planning. SMART became eligible for these funds starting in Fiscal Year 2019-20.

Fare Box Revenues

- Farebox Revenues: SMART passengers pay for their rides using the fare structure approved by the SMART Board in 2015 and 2016. SMART participates in the regional Clipper fare system that allows riders to transfer seamlessly among Bay Area operators using one fare media card. SMART also has its own mobile ticket device that provides for easy purchasing of multiple or discounted tickets without purchasing a Clipper card. The fares are based on the distance travelled by a rider which is like other commuter rail services. Prior to May 24, 2021, daily fares range from \$3.50 for a non-discounted adult travelling one zone, and \$11.50 if travelling 5 zones. SMART also provides several discounts available to SMART riders such as a youth, senior, low income, and passengers with disabilities. Effective May 24, 2021, fares were lowered from \$3.50 to \$1.50 for a non-discounted adult travelling one zone, and \$7.50 if travelling 5 zones. See new fare structure below.

One Way Fare						
	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Daily Max
	Promotional Fare	Promotional Fare	Promotional Fare	Promotional Fare	Promotional Fare	Promotional Fare
Adult Fare	\$ 1.50	\$ 3.00	\$ 4.50	\$ 6.00	\$ 7.50	\$ 15.00
Seniors, youth, low-income, and passengers with disabilities (50%)	\$ 0.75	\$ 1.50	\$ 2.25	\$ 3.00	\$ 3.75	\$ 7.50

In addition, a new “Weekend Day Pass” will be implemented on June 5, 2021. The Weekend Day Pass is \$10.00 for adults and \$5.00 for seniors, youth, passengers with disabilities, and low-income passengers. The Weekend Day Pass offers unlimited rides for the entire day. Beginning in September 2021, the 31-day pass will be \$135.00 for adults and \$67.50 for youth, seniors, and passengers with disabilities.

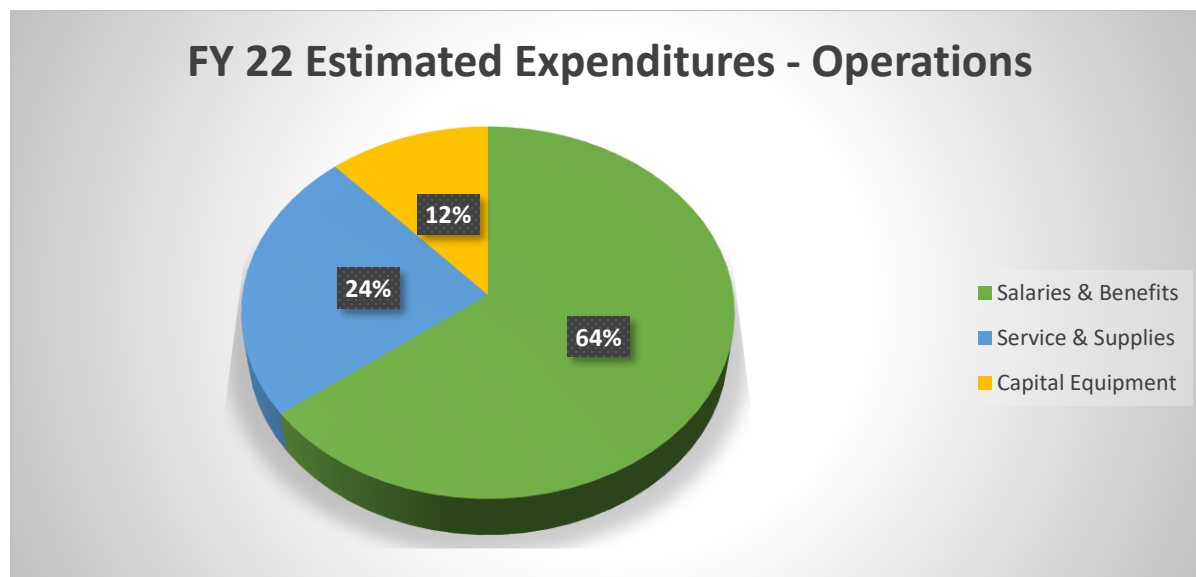
Other SMART Revenues

- Interest and Lease Earnings: Includes leases and interest earnings which are expected to remain the same in FY 22 and advertising revenue which is expected to increase but not to return to pre-pandemic levels until FY 24
- Miscellaneous Revenues: Vary each year, but are less in FY 22 due to one-time funds in FY 21
- Parking Revenue: Are expected to go up in FY 22 but not return to pre-pandemic levels until FY 24
- Charges for Services: Include dispatching and flagging services
- Other Governments: Joint project with City of San Rafael for Pathway Study

State revenues saw the most significant decline. We have had to postpone construction of the Sonoma County Pathway project due to current litigation, therefore we are not expecting to get state revenues to construct that project until after the lawsuit is resolved. The second largest change is in federal COVID-19 relief grants. We are expecting to receive American Rescue Plan Act (ARPA) funds consistent with our Federal 5307 allocation which would provide around \$10 million over several years however, these funds have not yet been allocated by the Metropolitan Transportation Commission, so they have not yet been reflected in the FY 22 budget.

Expenditures

Operations



Operations has three (3) major divisions that work together to move people in a safe, reliable, and affordable way.

The Transportation Division is responsible for operating the trains, checking fares, assisting passengers, ensuring onboard passenger safety, and ensuring compliance with FRA regulations related to train operations and passenger service. In addition, the Operations Control Center monitors the status of the entire system, dispatches passenger and freight trains, and is the emergency point of contact for outside first responder agencies.

The Vehicle Maintenance Division is responsible for preventative maintenance work, inspections, cleaning, and maintenance of the Diesel Multiple Units (DMUs), interior inspections and cleaning, and major repairs.

The Maintenance of Way Division is responsible for track and right of way inspection and maintenance, train control and grade crossing warning device maintenance and regulatory required inspections, and maintenance of all SMART owned facilities (stations, moveable bridge electronics and mechanics, buildings, and right of way fencing.)

Goals

- Maintaining a healthy staff and staffing levels throughout the pandemic
- Modifying instructions and protocols to coincide with changes at the various regulatory agencies
- Continue to develop training programs that will enable us to hire internal and local candidates to fill our technical positions

- DMU warranty issues
- Being prepared to return to higher levels of service

In addition to Transportation, Vehicle Maintenance and Maintenance of Way two additional functions are under the operations budget.

Public Safety Department

The Public Safety Department is to coordinate with Federal, State, and local jurisdictions to provide incident response, facility safety, and keep the public and our customers safe.

Goals

- Grant Opportunities for safety outreach
- Training with several police and fire departments
- Continued coordination with local, state, and federal agencies
- Receive security sensitive correspondence from local, state, and federal agencies pertaining to crime trends and national security issues
- Seek additional grant opportunities to partner with other law enforcement agencies for enforcement, equipment, and outreach materials

Train Control Systems

Train Control Systems is responsible for monitoring and managing the train control systems. The train control systems perform the following functions:

- Safely route trains
- Safely separate trains
- Track and report the location of trains
- Detect and report broken rail
- Detect and report misaligned switches
- Detect and report misaligned bridge
- Detect and report faults

Other integral parts of the train control systems include:

- Positive Train Control
- Haystack Movable Bridge
- Traffic Signal Interconnects
- Grade Crossing Warning Systems

Goals

- Implementation of a Rail Network Management System to include:
 - Central monitoring of Rail Network operation and activities
 - Pinpoint system faults along 45.5 miles or railroad
 - Allow for more rapid response to outages and issues

DESCRIPTION	FY 2019-20 FINAL ACTUALS	FY 2020-21 APPROVED AMENDED BUDGET PLUS ADJUSTMENTS	FY 2021-22 PROPOSED BUDGET
EXPENDITURES:			
OPERATIONS			
Salaries and Benefits			
Employee Salaries	10,651,825	11,845,176	12,166,025
Employee Benefits	2,990,424	3,665,401	4,121,189
Total Salaries and Benefits	13,642,248	15,510,578	16,287,214
Services and Supplies			
Uniform Expense	71,007	136,000	137,000
Communications	194,829	228,100	196,500
Maintenance-Equipment	371,030	454,676	467,576
Maintenance-Radios	115,432	151,400	163,750
Maintenance-Revenue Vehicles	1,169,501	2,576,119	742,500
Maintenance-Railway	793,540	373,090	394,250
Maintenance of Signals	122,214	204,351	200,000
Maintenance-Buildings/Facilities	205,150	248,567	247,080
Maintenance - Pathway	8,297	10,000	12,000
Transportation Services	190,391	93,000	93,000
Office Expense	71,489	86,500	76,000
Agency Extra Help	-	5,000	2,500
Rents/Leases - Equipment	60,911	82,020	73,020
Minor Equipment	190,563	253,688	217,190
Computer Software and Hardware	194,564	268,880	-
Training, Travel and Memberships	31,966	63,180	94,000
Fuel and Lubricants	950,388	905,000	1,255,000
Miscellaneous	1,801	4,500	4,900
Professional Services	1,604,750	1,415,020	909,040
Utilities	563,607	700,525	705,275
Total Services and Supplies	6,911,428	8,259,616	5,990,581
Buildings & Capital Improvements (Capital Assets)			
Buildings & Improvements		-	-
Vehicles, Equipment	1,988,014	2,349,778	2,931,000
Total Buildings and Capital Improvement	1,988,014	2,349,778	2,931,000
TOTAL OPERATIONS EXPENDITURES	\$ 22,541,691	\$ 26,119,972	\$ 25,208,795

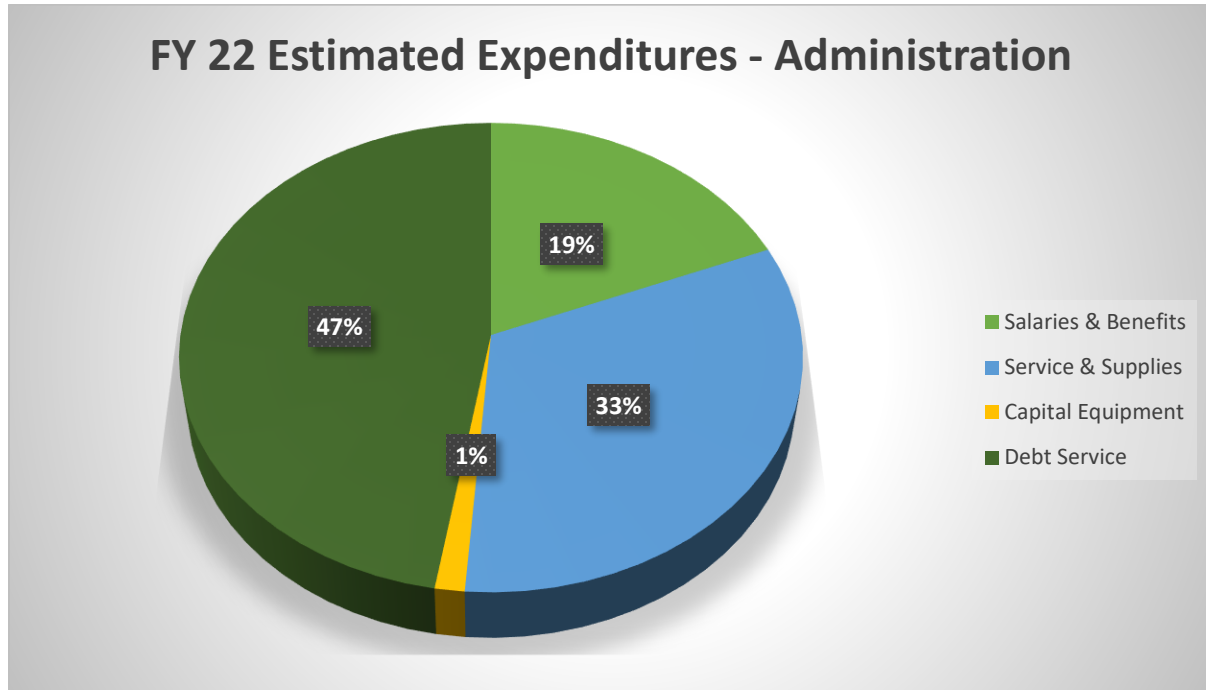
Included in the FY 2021/2022 draft budget is funding to restore weekend service to pre-pandemic levels and to increase weekday service to the 26 trips per day.

The increases in employee salaries and benefits and fuel and lubricants are a result of adding weekend service and restoring some weekday service. We have added back two (2) Engineer/Conductor positions and one (1) new Track Maintainer position. We have also included all the pay requirements per the existing collective bargaining agreements. The capital equipment of \$2.9 million includes funding for Diesel Multiple Units (DMU) transmission, DMU restroom overhaul, permanent magnet alternator overall, automatic passenger counters, Heating, Ventilation, and Air Conditioning (HVAC) system overhaul, spare parts, and the upgrade of the automatic vehicle locator equipment and grade crossing cameras.

This budget only has funding for the service identified above. To add additional weekday or weekend service, we have estimated that we would need an additional \$ 2.2 million per year. We would need to receive an allocation from ARPA before we would have sufficient funds to return to or exceed those levels.

Administration

The Administration budget funds the day-to-day business functions of the organization such as finance, human resources, planning, legal, and information technology



Departments under Administration

Communications and Marketing Department

The Communications Department consists of three different areas of focus: Media and Public Relations, Marketing, and Customer Service.

Media and Public Relations is responsible for keeping SMART's external audiences informed and engaged about the agency's services, programs, and projects. Some examples are:

- Digital and Social Media Platforms
- Websites
- Construction Outreach
- Media relations
- Community presentation and events
- Rail Safety Education

Marketing is responsible for outreach and marketing. Some examples are:

- Digital and Print Advertising
- On-Board Train and Platform Advertising
- Rider Surveys

- Marketing Collateral

Customer Service is responsible for responding to customer inquiries through phone and emails received. Other activities include:

- Problem and Issue Resolution
- Lost and Found
- Mobile Fare Refund Requests

Goals

- Increase outreach to identified audiences
- Listen to feedback and implement strategies to meet the needs of SMART's riders

Finance Department

The Finance Department includes the following functions:

- Budget
- Accounting
- Finance
- Treasury
- Payroll
- Grants Budgeting and Reporting

Goals

- Implementation of the FY 2021/2022 Budget
- Creation and adoption of the FY 2022/2023 Budget
- Review and update SMART's Short-Range Transit Plan
- Develop a Transit Asset Management Plan
- Review and Improve Invoicing Process

Human Resource Department

Human Resources is responsible for personnel issues, recruitment and selection of employees, employee compensation, labor negotiations, and performance management.

Goals

- Labor Relations – Two of our current contracts will expire on June 30, 22 – International Association of Machinists and Teamsters Union. In addition, the Teamsters Track Supervisors contract expires on June 30, 2021
- Increased presence at the Operations Center
- Training
 - Collaborate with Operations to create trainee positions

- Launch HR focused training for Managers and Supervisors when pandemic restrictions ease

Information Technology (IT) Department

The Information Technology (IT) Department develops, operates, and maintains SMART's information and telecommunications systems.

- Maintains the cybersecurity of all SMART IT systems
- Administrative Information Systems for 4 offices such as email, servers, and printers
- Railroad Information Systems such as CCTV, radio, platform equipment, and fare collection devices
- 776 devices such as computers, cell phones, vehicle locators, printers, radios, and network devices

Goals

- Complete the SMART File System migration to the cloud
- Continue to invest in IT security
- Further automate MAXIMO reporting

Legal Department

The Legal department is responsible for the following:

- Transactional Matters
 - Develop overall legal strategies
 - Analyze and review District policies and procedures
 - Provide advice to Board of Directors and District staff
- Litigation
 - Contract
 - Labor
 - Compliance
 - Real Estate
 - Personal Injury
 - Property Damage

Goals

- Labor negotiations
- COVID-19 matters
- Freight operations
- Federal regulatory issues
- Property access, crossings, and freight spur issues
- Litigation

Planning Department

Planning is responsible for the following functions:

- Grant Development and Reporting
- Planning
- Legislative Support

Goals

- Increased demand for new data analysis
- Increased coordination with MTC and our partner transit agencies
- State Route 37 Coordination and planning activities as the State of California moves forward
- Secure and manage funds for ongoing operations and capital projects

Procurement Department

Procurement is responsible for the purchase and contracting of goods and services, contract administration, asset disposition, and vendor outreach, onboarding, and management.

Goals

- More efficiency and automation
- Implementation of purchasing and contracting resource and training program for staff
- Reduction of paper files – transition to fully electronic procurement records

Real Estate

The Real Estate Department is responsible for managing SMART's Right-of-Way, processes all third-party requests for access to the Right-of-Way, and property sales, acquisitions, supports all departments with title research and boundary information.

The following is SMART's property portfolio:

- 102 miles of track
- 12 stations and the property
- 4 ½ acre maintenance facility
- 3 smaller maintenance facilities
- 4.5-acre site in Downtown Petaluma
- 11-acre site in Healdsburg

Goals

- Streamline processes for permits
- Continue development of SMART's records
- Complete database for property ownership at crossings on the Brazos Branch
- Integrate new survey records for the sections of the Windsor Pathway

- Research title records of property acquired from NCRA
- Private crossing agreements with property owner on Brazos Branch
- Start integrating the additional 21 miles of property from NCRA into District records

DESCRIPTION	FY 2019-20 FINAL ACTUALS	FY 2020-21 APPROVED AMENDED BUDGET PLUS ADJUSTMENTS	FY 2021-22 PROPOSED BUDGET
EXPENDITURES:			
ADMINISTRATION			
Salaries and Benefits			
Employee Salaries	3,471,392	3,761,327	4,374,878
Employee Benefits	1,020,377	1,280,643	1,549,435
Total Salaries and Benefits	4,491,769	5,041,970	5,924,313
Services and Supplies			
Communications	30,748	49,250	49,250
Insurance	1,751,589	2,410,490	2,672,121
Maintenance-Facilities	19,240	31,035	5,000
Fees/ Miscellaneous Expense	725,197	63,338	68,270
Office Expense	61,614	85,860	85,860
Postage, Printing, Periodicals	29,286	58,600	71,800
Accounting/ Payroll Services	81,626	93,791	95,385
Professional Services	721,606	789,995	1,817,620
Agency Extra Help	21,018	100,000	100,000
State Administrative Fee	805,480	901,134	1,000,000
Legal Services	202,738	404,928	2,120,000
Rents/Leases	489,495	511,468	499,193
Computer Software and Hardware	111,762	254,050	583,780
Public Outreach	30,311	261,700	861,281
Training, Travel and Memberships	43,033	127,700	157,930
Mileage Expense	33,529	39,920	39,620
Total Services and Supplies	\$ 5,158,270	\$ 6,183,260	\$ 10,227,109
Other Charges and Payments			
Bond Principal, Interest	16,747,600	14,284,259	14,936,756
Settlements	100,000	-	-
Total Other Charges	16,847,600	14,284,259	14,936,756
Buildings & Capital Improvements (Capital Assets)			
Equipment	45,942	83,000	445,600
Total Buildings and Capital Improvements	45,942	83,000	445,600
TOTAL ADMINISTRATION EXPENDITURE	\$ 26,543,581	\$ 25,592,489	\$ 31,533,778

Included in the Administration budget is payment of the annual debt service. It is budgeted at \$14.9 million approximately \$3 million less than it was prior to the refinancing of the debt in October of 2020.

Costs for railroad liability insurance is anticipated to increase by approximately \$250,000. We are still waiting for the actual insurance bids, so this number may change and need to be adjusted in the FY 22 amended budget.

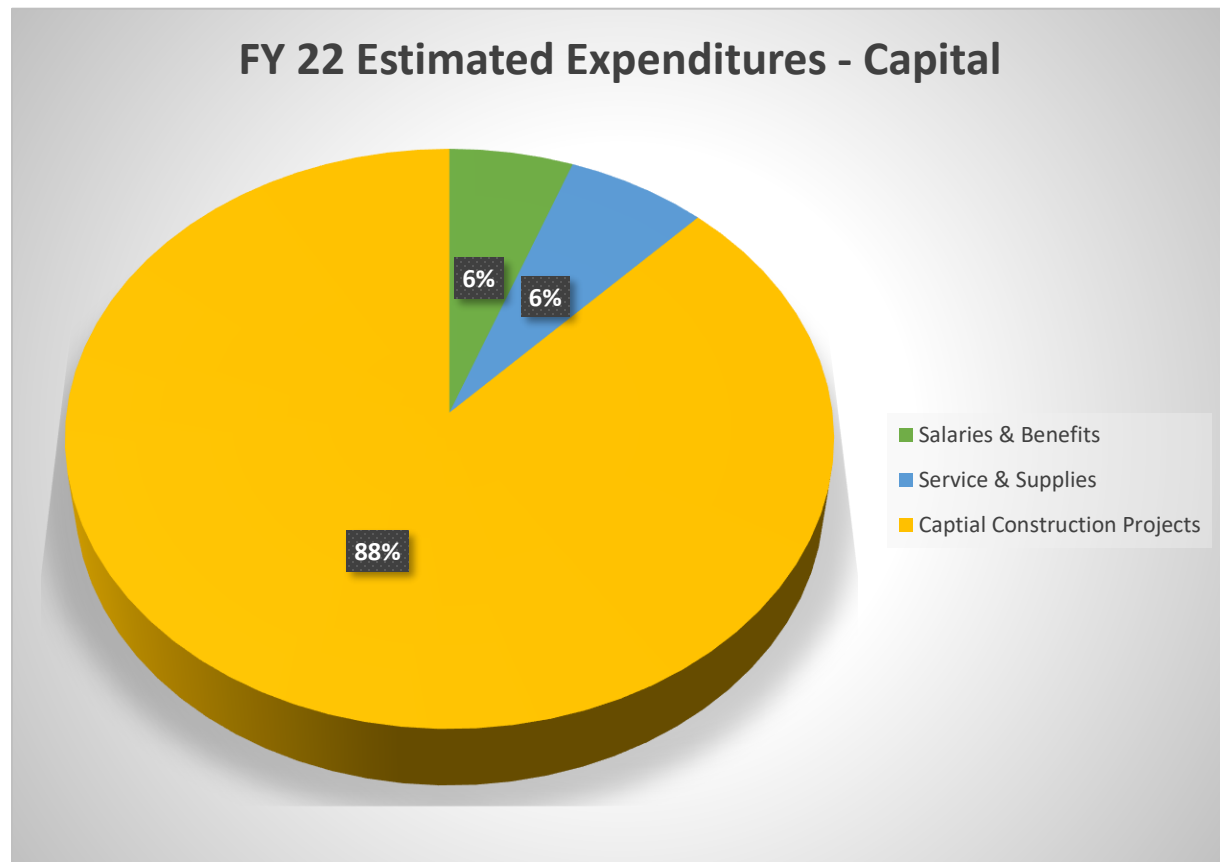
Also included are funds for legal services and the “Welcome Back” campaign. We have included funds for interns, cost of living increases, and personnel step increases. We are also requesting one (1) new purchasing assistant position. This position is needed to support the organization including operations and capital because of increased workload related to contracts, more federal funds, and more procurements.

During our presentation on performance metrics, we identified the need for resources to gather data and develop further metrics. We have included \$195,000 in the Administration budget for pathway counter and consulting services, web reporting tools, and train and pathway surveys.

We have also included \$387,600 for Information Technology capital projects to replace and upgrade of servers, routers, and switches.

Capital

The capital budget includes projects identified in the Capital Plan adopted by the Board in April. The largest category of expenditures in the Capital budget is Capital Projects.



Capital Programs

Capital Programs is responsible for planning and managing the expansion of the rail and pathway systems, managing SMART's existing infrastructure, supporting grant applications, and coordinating with local municipalities.

Goals

- Secure funding for Windsor so construction activities can resume
- Finalize design, secure permits, and initiate utility relocations for the Sonoma County Pathway project.
- Implement the Capital Improvement Plan approved by the SMART Board of Directors
- Leverage railroad closures to make needed improvements at the Roblar Timber Trestle Bridge

DESCRIPTION	FY 2019-20 FINAL ACTUALS	FY 2020-21 APPROVED AMENDED BUDGET PLUS ADJUSTMENTS	FY 2021-22 PROPOSED BUDGET
EXPENDITURES:			
CAPITAL			
Salaries and Benefits			
Employee Salaries	996,517	1,088,740	1,121,402
Employee Benefits	321,536	329,021	361,028
Total Salaries and Benefits	1,318,053	1,417,761	1,482,430
Services and Supplies			
Communications	8,196	7,700	7,700
Professional Services - Project	289,718	805,200	711,830
Computer Software and Hardware	14,714	11,336	3,000
Training, Travel, Memberships	2,591	6,000	4,500
Permits/Fees	45,040	17,500	30,000
Mileage Expense	-	5,000	1,000
Total Services and Supplies	360,258	852,736	758,030
Other Charges and Payments			
Other Governments	918,506	3,786,500	30,000
Total Other Charges	918,506	3,786,500	30,000
Buildings & Capital Improvements (Capital Assets)			
Land		-	-
Buildings & Improvements			
Machinery and Equipment	34,006		
Capital Equipment - Work in Progress	10,805,628	3,177,138	25,000
Infrastructure	24,463,033	19,034,041	10,179,857
Total Buildings and Capital Improvement	35,302,667	22,211,179	10,204,857
Interfund Transfers			
Salaries and Benefits Transfer - Capital	(861,571)	(860,000)	(816,560)
Total Interfund Transfer	(861,571)	(860,000)	(816,560)
TOTAL CAPITAL EXPENDITURES	\$ 37,037,913	\$ 27,408,176	\$ 11,658,757

As was mentioned previously, the Board approved \$20.2 million for capital related to operations, maintenance, and safety to be funded between FY 22 and FY 29. In addition, the plan provided for \$21.4 million to be funded for design, environmental, permitting, mitigation, construction, and match dollars for grants between FY 22 and FY 29. The following itemizes the portion of the \$21.4 million that is funded in FY 22.

We have funded \$5,500,000 in this budget to be used towards design and permitting funds for the following pathway projects:

- McInnis Parkway to Smith Ranch Road

- Smith Ranch Road to Main Gate Road
- Sate Access Road to Bay Trail
- Hannah Ranch Road to Vintage Way
- Vintage Way to North Side Novato Circle
- Grant Avenue to Olive Avenue
- Olive Avenue to Rush Creek Place
- Lakeville to Payran Street
- Lakeville to Oak Street Extension
- Main Street to E. Railroad Avenue
- 3rd Street to 6th Street
- Guernville Road to W. Steele Lane
- W. Steele Lane to San Miguel Boulevard
- San Miguel Boulevard to Airport Boulevard

Also included in capital expenditure budget is \$1,085,806 for construction of the Payran to Lakeville pathway project. Of which \$806,000 is federal funding and \$279,806 is SMART funding. We have also included \$30,000 for a feasibility study of the Puerto Suello to North San Pedro pathway. SMART will be providing \$15,000 towards the study with \$15,000 coming from the City of San Rafael.

We are also funding design and permitting funds for two timber bridges in the amount of \$313,110. Those bridges are:

- Milepost (MP) 24.36 Drainage Tributary Pacheco Creek Timber Bridge Replacement
- MP 31.47 San Antonio Tributary Timber Trestle Replacement

Carryforward Funds/ Expenditures

As part of the FY 22 budget, we are anticipating carrying forward approximately \$10.2 million from FY 21 to FY 22. This includes projects and programs that are not estimated to completed or expended in FY 22. Both the revenues and expenditures will be rolled forward. Because we are estimating what will be spent between now and June 30, 2021, this number will most likely change and will be adjusted in the FY 22 amended budget.

Reserves

SMART has several reserves that have been established for various purposes.

Pension Liability Reserve

This reserve is to ensure that we have funds set aside for future pension costs. We have set aside \$500,000 for FY 2022 but this figure could change as the actual contribution is based on the year-end actuarial calculation. Once we close the books, we will be able to calculate the amount of pension liability. Once that is known we can true-up the amount transferred to this reserve in the FY 22 amended budget. The FY 22 balance is \$3,574,676.

Equipment Reserve

This reserve is used to accumulate funds for future capital equipment needs such as vehicle replacement. The current balance is \$7,625,000. These funds were assumed to be utilized towards completion of the capital plan approved by the Board in April 2021.

Corridor Completion Reserve

This reserve was established in the FY 2020/2021 amended budget to set aside funds for design, environmental, or leveraging grants. The current balance is \$7,000,000. These funds were assumed to be utilized towards completion of the capital plan approved by the Board in April 2021.

Operating Reserve

The FY 2020/2021 operating reserve is \$10 million. We have done the calculation and 25% of the operating costs for FY 2021/2022 would result in a reserve of \$9.6 million. Since this is below the \$10 million minimum threshold, the reserve will remain at \$10 million for FY 22.

The current estimated fund balance after deducting the reserves is \$23 million.

Debt

In October of 2020, SMART pursued a successful taxable advance refunding of the 2011A bonds. The refunding matched the existing March 1, 2029 final maturity of the 2011A bonds. These bonds are secured by a gross lien of SMART's ¼ cent sales tax. The bonds were rated AA" by Standard & Poors. The new debt service schedule is listed below.

Fiscal Year	Series 2020 Bonds Principal	Series 2020 Bonds Interest	Debt Service
2021	\$3,365,000.00	\$566,576.35	\$3,931,576.35
2022	13,280,000.00	1,656,755.80	14,936,755.80
2023	14,015,000.00	1,581,192.60	15,596,192.60
2024	14,765,000.00	1,479,443.70	16,244,443.70
2025	15,580,000.00	1,324,115.90	16,904,115.90
2026	15,860,000.00	1,136,844.30	16,996,844.30
2027	16,105,000.00	893,869.10	16,998,869.10
2028	16,385,000.00	614,930.50	16,999,930.50
2029	13,615,000.00	284,281.20	13,899,281.20
Total	\$122,970,000.00	\$9,538,009.45	\$132,508,009.45

APPENDIX A – OVERVIEW OF ALL SOURCES AND USES

Exhibit A					
BUDGET REPORT: OVERVIEW OF ALL SOURCES AND USES					
		FY 2019-20	FY 2020-21	FY 2021-22	
		FINAL ACTUALS	APPROVED AMENDED BUDGET PLUS ADJUSTMENTS	PROPOSED BUDGET	EXPLANATION OF SIGNIFICANT CHANGES
Budgeted Revenue					
1	Sales/Use Taxes	39,784,110	39,133,000	42,074,000	Aligned with latest forecast from Muni-Services
2	Interest and Lease Earnings	1,238,993	738,700	732,665	Includes Leases/ Advertising/ and Interest Expense; Leases remain the same, advertising is higher than amended budget but not expected to return to pre-pandemic levels until FY24
3	Miscellaneous Revenues	931,087	105,000	30,000	Decrease due to one-time funds in FY21
4	Fare Revenue	3,090,457	655,525	811,050	Fare reductions are assumed for FY 22.
5	Parking Revenue	50,368	25,000	27,000	Parking revenues are expected to be slightly higher than FY21 and return to pre-pandemic levels by FY24
6	State Grants	27,828,105	20,204,131	6,546,727	No grants or capital construction projects in FY22
7	State Grants - Freight (Fund 40)	-	6,000,000	-	Expected that these revenues will carry forward to FY22
8	Charges For Services	189,184	80,000	57,500	
9	Federal Funds (Non-COVID Relief)	2,609,220	7,394,025	3,843,733	Federal 5307 funds + FRA suicide prevention grant + CMAQ Strike
10	Federal Funds (COVID Relief)	8,058,183	8,684,064	-	Have not assumed ARPA funds at this time
11	Other Governments/ Misc.	5,442,759	8,957,193	15,000	Joint project with City of San Rafael - Puerto Suello to North San Pedro Pathway Study
12	Measure M	22,632	157,348	-	
13	Total All Revenues	\$ 89,245,098	\$ 92,133,986	\$ 54,137,675	
14	Beginning Fund Balance	\$ 41,295,147	\$ 44,417,060	\$ 37,826,030	
15	Total Revenues + Beginning Fund Balance	\$ 130,540,245	\$ 136,551,046	\$ 91,963,705	
Debt Service					
16	Debt Service	\$ 16,747,600	\$ 14,284,259	\$ 14,936,756	
17	Total Revenues Less Debt Service	\$ 113,792,645	\$ 122,266,787	\$ 77,026,949	
Budgeted Expenditures					
18	Salaries & Benefits	19,452,070	21,970,308	23,693,957	Four additional positions, salary increases consistent with collective bargaining agreements, and increased cost of benefits
19	Services & Supplies	12,429,957	15,295,612	16,975,720	Fuel increase tied to schedule increase, performance metrics, welcome back campaign, increased insurance costs, legal expertise
20	Other Charges	100,000	-	-	
21	Equipment, Buildings & Improvements	2,033,956	2,432,778	3,376,600	DMU capital maintenance, automatic passenger counters, grade-crossing & Calpark Tunnel cameras, pathway chip and seal project, IT security/ server replacement
22	Capital Projects	35,302,667	22,211,179	10,204,857	No capital construction projects in FY22; Design and permitting for pathway projects, bridge repair, mitigation
23	Other Governments	918,506	3,786,500	30,000	Reimbursable work for other jurisdictions fluctuates
24	Freight (Fund 40)	-	6,000,000	-	Joint project with City of San Rafael - Puerto Suelo to North San Pedro Pathway Study
25	Account and Fund Transfers	(861,571)	(860,000)	(816,560)	Capitalizable labor
26	Total Budgeted Expenditures	\$ 69,375,585	\$ 70,836,377	\$ 53,464,574	
27	Total Revenues Less Debt Service and Budgeted Expenditures	\$ 44,417,060	\$ 51,430,410	\$ 23,562,375	Available Budget Sources minus All Uses
28	Transfer to Future OPEB/CalPERS Liability Fund	\$ -	\$ 1,079,380	\$ 500,000	
29	Transfer to Equipment Sinking Funds	\$ -	\$ 5,525,000	\$ -	
	Transfer Fund Balance to New Corridor				
30	Completion Reserve	\$ -	\$ 7,000,000	\$ -	
	Adjustment to match Board approved minimum				
31	agency reserve	\$ -	\$ -	\$ -	
32	Total Additional Adjustments	\$ -	\$ 13,604,380	\$ 500,000	
33	Estimated FY Ending Fund Balance	\$ 44,417,060	\$ 37,826,030	\$ 23,062,375	
Restricted Fund Balances (Reserves)					
34	Self Insured	1,876,019	1,876,019	1,876,019	
36	Future OPEB/ CalPERS Liability Fund	1,995,296	3,074,676	3,574,676	
35	Equipment Sinking Fund	2,100,000	7,625,000	7,625,000	
37	Corridor Completion Reserve (New)		7,000,000	7,000,000	
38	Operating Reserve (25% or 3 months operating)	10,000,000	10,000,000	10,000,000	

APPENDIX B – POSITION AUTHORIZATION

Appendix B						
Fiscal Year 2021-22 : Proposed Position Authorization						
Position	Authorized FTE	Salary Range: Annual		Salary Range: Hourly		COMMENTS
		Low	High	Low	High	
ADMINISTRATIVE POSITIONS						
Accountant	1	\$ 78,874	\$ 95,888	\$ 37.92	\$ 46.10	
Accounting Assistant	1	\$ 57,242	\$ 69,576	\$ 27.52	\$ 33.45	
Administrative Assistant	1	\$ 54,454	\$ 66,186	\$ 26.18	\$ 31.82	
Assistant General Counsel	1	\$ 145,558	\$ 176,925	\$ 69.98	\$ 85.06	
Assistant Planner*	1	\$ 75,109	\$ 91,312	\$ 36.11	\$ 43.90	
Chief Financial Officer	1	\$ 232,710	\$ 282,859	\$ 111.88	\$ 135.99	
Clerk of the Board	1	\$ 82,846	\$ 100,714	\$ 39.83	\$ 48.42	
Communications and Marketing Manager	1	\$ 142,022	\$ 172,619	\$ 68.28	\$ 82.99	
Community Outreach Coordinator	1	\$ 77,002	\$ 93,579	\$ 37.02	\$ 44.99	
Community Outreach Specialist	1	\$ 116,542	\$ 141,648	\$ 56.03	\$ 68.10	
Fiscal Manager	1	\$ 131,893	\$ 160,326	\$ 63.41	\$ 77.08	
General Counsel	1	\$ 232,710	\$ 282,859	\$ 111.88	\$ 135.99	
General Manager	1	\$ 290,000	\$ 330,000	\$ 139.42	\$ 158.65	Adjusted per RESO 2021-09
Human Resources Manager	1	\$ 128,648	\$ 156,374	\$ 61.85	\$ 75.18	
Human Resources Principal Analyst	1	\$ 116,542	\$ 141,648	\$ 56.03	\$ 68.10	
Human Resources Technician	1	\$ 71,469	\$ 86,861	\$ 34.36	\$ 41.76	
Information Systems Manager	1	\$ 128,648	\$ 156,374	\$ 61.85	\$ 75.18	
Information Systems Technician	1	\$ 78,874	\$ 95,888	\$ 37.92	\$ 46.10	
Intern	Multiple Positions	Up to total amount	\$ 60,000			
Legal Administrative Assistant	1	\$ 71,469	\$ 86,861	\$ 34.36	\$ 41.76	
Payroll Technician	1	\$ 57,242	\$ 69,597	\$ 27.52	\$ 33.46	
Principal Planner	1	\$ 125,757	\$ 152,838	\$ 60.46	\$ 73.48	
Procurement Assistant	0-1	\$ 59,550	\$ 72,384	\$ 28.63	\$ 34.80	Added 1 FTE
Procurement Manager	1	\$ 108,243	\$ 131,560	\$ 52.04	\$ 63.25	
Programming and Grants Manager	1	\$ 149,219	\$ 181,397	\$ 71.74	\$ 87.21	
Real Estate Manager	1	\$ 160,659	\$ 195,291	\$ 77.24	\$ 93.89	
Senior Administrative Analyst	1	\$ 95,659	\$ 116,272	\$ 45.99	\$ 55.90	
Senior Real Estate Officer	1	\$ 108,243	\$ 131,560	\$ 52.04	\$ 63.25	
Supervising Accountant	1	\$ 93,330	\$ 113,443	\$ 44.87	\$ 54.54	
Subtotal Administrative Full Time Equivalents (FTE)		28				

Appendix B : Continued on Next Page (Page 1 of 3)

Appendix B

Fiscal Year 2021-22 : Proposed Position Authorization						
Position	Authorized FTE	Salary Range: Annual		Salary Range: Hourly		COMMENTS
		Low	High	Low	High	
CAPITAL POSITIONS						
Assistant Engineer *	2	\$ 91,062	\$ 110,656	\$ 43.78	\$ 53.20	
Associate Engineer*	2	\$ 108,243	\$ 131,560	\$ 52.04	\$ 63.25	
Principal Engineer*	1	\$ 142,022	\$ 172,598	\$ 68.28	\$ 82.98	
Chief Engineer	1	\$ 190,965	\$ 232,107	\$ 91.81	\$ 111.59	
Manager Train Control Systems	1	\$ 190,965	\$ 232,107	\$ 91.81	\$ 111.59	
Project Extra hires *		\$ -	\$ 50,000	\$ -	\$ -	
Subtotal Capital Full Time Equivalents (FTE)		7				

* Denotes Limited-Term Position Dependent on Project need

Table 5 : Continued on Next Page (Page 2 of 3)

Appendix B						
Fiscal Year 2021-22 : Proposed Position Authorization						
Position	Authorized FTE	Salary Range: Annual		Salary Range: Hourly		COMMENTS
		Low	High	Low	High	
OPERATIONS POSITIONS						
Administrative Assistant	1	\$ 54,454	\$ 66,186	\$ 26.18	\$ 31.82	
Administrative Analyst-Purchasing	1	\$ 87,090	\$ 105,851	\$ 41.87	\$ 50.89	
Administrative Services Manager	1	\$ 91,062	\$ 110,677	\$ 43.78	\$ 53.21	
Assistant Superintendent of Transportation	1	\$ 110,947	\$ 134,867	\$ 53.34	\$ 64.84	
Bridge Tender*	2.5	-	\$ 68,203	-	\$ 32.79	Adjusted per Collective Bargaining Agreement
Chief of Police	1	\$ 173,014	\$ 210,330	\$ 83.18	\$ 101.12	
Code Compliance Officer	3	\$ 69,763	\$ 84,781	\$ 33.54	\$ 40.76	
Controller /Supervisor	10	\$ 97,594	\$ 118,643	\$ 46.92	\$ 57.04	
Conductor**	11	\$ 72,966	\$ 85,821	\$ 35.08	\$ 41.26	Adjusted per Collective Bargaining Agreement
Engineer-Conductor**	23 25	\$ 87,714	\$ 103,189	\$ 42.17	\$ 49.61	Added 2 FTE; Adjusted per Collective Bargaining Agreement
Extra Hires Operations		-	\$ 350,000	-	-	
Facilities Maintenance Supervisor	1	\$ 100,506	\$ 122,179	\$ 48.32	\$ 58.74	
Facilities Maintenance Technician	3	-	\$ 85,322	-	\$ 41.02	Adjusted per Collective Bargaining Agreement
Laborers-Vehicle Maintenance	10	-	\$ 65,707	-	\$ 31.59	Adjusted per Collective Bargaining Agreement
Laborers-Track Maintenance	2	-	\$ 63,773	-	\$ 30.66	Adjusted per Collective Bargaining Agreement
Operations Manager	1	\$ 190,965	\$ 232,107	\$ 91.81	\$ 111.59	
Parts Clerk	2	\$ 64,750	\$ 78,707	\$ 31.13	\$ 37.84	
Railroad Information Systems Specialist	1	\$ 113,714	\$ 138,195	\$ 54.67	\$ 66.44	
Safety & Compliance Officer	1	\$ 131,893	\$ 160,326	\$ 63.41	\$ 77.08	
Signal Supervisor	2	\$ 108,243	\$ 131,560	\$ 52.04	\$ 63.25	
Signal Technician	9	-	\$ 112,965	-	\$ 54.31	Adjusted per Collective Bargaining Agreement
Signal Technician Trainee***	2	-	\$ 84,718	-	\$ 40.73	Adjusted per Collective Bargaining Agreement
Superintendent of Vehicle Maintenance	1	\$ 131,893	\$ 160,326	\$ 63.41	\$ 77.08	
Superintendent of Transportation	1	\$ 131,893	\$ 160,326	\$ 63.41	\$ 77.08	
Superintendent Signals and Way	1	\$ 131,893	\$ 160,326	\$ 63.41	\$ 77.08	
Track Maintainer 1	4 5	-	\$ 84,490	-	\$ 40.62	Added 1 FTE; Adjusted per Collective Bargaining Agreement
Track Maintainer 2	1	-	\$ 92,934	-	\$ 44.68	Adjusted per Collective Bargaining Agreement
Track Maintenance Supervisor	2	\$ 97,365	\$ 118,373	\$ 46.81	\$ 56.91	
Vehicle Maintenance Supervisor	4	\$ 103,002	\$ 125,216	\$ 49.52	\$ 60.20	
Vehicle Maintenance Technician	12	-	\$ 103,251	-	\$ 49.64	Adjusted per Collective Bargaining Agreement
Subtotal Operations Full Time Equivalents (FTE)**	104.5	\$ 6,144,493				
TOTAL ALL SMART DEPARTMENTS	139.5					

** Engineer/Conductor may be filled by Conductors, Total FTE for both positions combined is 25

***Signal Technicians may be filled by Signal Technician Trainees, Total FTE for both is 9

APPENDIX C -STATISTICAL INFORMATION

SMART is a special district established by the California Legislature through the enactment of AB 2224 in 2002. The SMART District includes both Sonoma and Marin Counties and was created for the purpose of providing unified and comprehensive structure for the ownership and governance of passenger and freight rail system within Sonoma and Marin Counties and to provide passenger and freight train service along the existing publicly owned railroad right-of-way.

Marin County

Marin County is in the northwestern part of the San Francisco Bay Area. Its county seat is San Rafael. Marin County is across the Golden Gate Bridge from San Francisco, and is included in the San Francisco–Oakland–Berkeley, CA Metropolitan Statistical Area.

As of 2019, Marin County had the sixth highest income per capita of all U.S. counties. The county is governed by the Marin County Board of Supervisors.

San Quentin State Prison is located in the county, as is George Lucas' Skywalker Ranch. Autodesk, the publisher of AutoCAD, is also headquartered there, as well as numerous other high-tech companies. The Marin County Civic Center was designed by Frank Lloyd Wright and draws thousands of visitors a year to guided tours of its arch and atrium design. Marin County's natural sites include the Muir Woods redwood forest, the Marin Headlands, Stinson Beach, the Point Reyes National Seashore, and Mount Tamalpais.

Sonoma County

Sonoma County is in the northwestern part of the San Francisco Bay Area. Its county seat and largest city is Santa Rosa. It is to the north of Marin County and the south of Mendocino County.

Sonoma County includes the Santa Rosa and Petaluma Metropolitan Statistical Area. It is the northernmost county in the nine-county San Francisco Bay Area region.

In California's Wine Country region, which also includes Napa, Mendocino, and Lake counties, Sonoma County is the largest producer. It has thirteen approved American Viticultural Areas and more than 350 wineries. The voters have twice approved open space initiatives that have provided funding for public acquisition of natural areas, preserving forested areas, coastal habitat, and other open space.

**POPULATION OF SONOMA COUNTY
AND INCORPORATED CITIES**

Area	2016	2017	2018	2019	2020
Sonoma County	503,322	502,758	498,849	495,058	491,134
Cloverdale	8,927	8,988	9,141	9,279	9,213
Cotati	7,376	7,453	7,739	7,628	7,533
Healdsburg	11,734	11,757	12,232	12,166	12,089
Petaluma	61,488	61,657	62,251	62,195	61,873
Rohnert Park	42,586	42,490	43,178	43,134	43,069
Santa Rosa	176,937	178,064	177,017	175,183	173,628
Sonoma	10,929	11,072	11,423	11,164	11,050
Windsor	27,445	27,492	28,356	28,596	28,248
Remainder of County	155,900	153,785	147,512	145,713	144,431

Note: City stats as of January 1, 2020, County stat as of July 1, 2020

Source: State of California, Department of Finance, Demographic Research Unit.

**POPULATION OF MARIN COUNTY
AND INCORPORATED CITIES**

Area	2016	2017	2018	2019	2020
Marin County	263,010	262,313	262,234	260,969	258,956
Belvedere	2,129	2,131	2,148	2,139	2,124
Corte Madera	9,631	9,625	10,043	10,138	10,114
Fairfax	7,528	7,533	7,714	7,443	7,399
Larkspur	12,312	12,325	12,588	12,331	12,253
Mill Valley	15,024	14,956	14,669	14,743	14,674
Novato	54,593	54,516	54,151	54,062	53,702
Ross	2,538	2,536	2,528	2,548	2,550
San Anselmo	13,017	12,982	12,908	12,845	12,757
San Rafael	60,551	60,661	60,020	60,207	59,807
Sausalito	7,227	7,234	7,421	7,301	7,252
Tiburon	9,644	9,647	9,366	9,581	9,540
Remainder of County	68,816	68,167	68,678	67,631	66,784

Note: City statistics as of January 1, 2020, County statistics as of July 1, 2020

Source: State of California, Department of Finance, Demographic Research Unit.

UNEMPLOYMENT RATES

The following compares unemployment rates for the State of California, Marin County, and Sonoma County for March 2021. These rates are not seasonally adjusted.

Area	Period	Labor Force	Unemployment	Unemployment Rate
California	Mar-21	18,912,300	1,551,200	8.2%
Marin County	Mar-21	131,300	6,200	4.7%
Sonoma County	Mar-21	241,000	14,400	6.0%

Source: State of California, California Employment Development Department

MEASURES OF INCOME

The following compares per capita personal income and total personal income for California, Marin County, and Sonoma County.

Area	Period	Income Type	Income
California	2018	Per Capita Personal Income - BEA	\$ 63,557
		Total Personal Income - BEA	\$ 2,514,129,262
Marin County	2018	Per Capita Personal Income - BEA	\$ 134,275
		Total Personal Income - BEA	\$ 34,866,708
Sonoma County	2018	Per Capita Personal Income - BEA	\$ 64,501
		Total Personal Income - BEA	\$ 32,246,609

Source: State of California, California Employment Development Department

MEDIAN PRICE OF HOMES SOLD

Area	Year	Property Value
California	2019	\$ 589,774
Marin County	2019	\$ 1,306,727
Sonoma County	2019	\$ 655,947

Source: State of California, California Employment Development Department

BUILDING PERMITS

Building Permits – Multi-Family Homes

Area	Period	# of Permits	Total Costs
California	2019	50,048	\$ 8,922,683,004
Marin County	2019	61	\$ 19,137,995
Sonoma County	2019	350	\$ 56,936,010

Source: State of California, California Employment Development Department

Building Permits – Single Family Homes

Area	Period	# of Permits	Total Costs
California	2019	56,085	\$ 16,660,377,350
Marin County	2019	179	\$ 95,389,522
Sonoma County	2019	2,077	\$ 696,782,526

Source: State of California, California Employment Development Department

Building Permits – All Construction

Area	Period	# of Permits	Total Costs
California	2019	106,133	\$ 25,583,060,354
Marin County	2019	240	\$ 114,527,517
Sonoma County	2019	2,427	\$ 753,718,536

Source: State of California, California Employment Development Department

APPENDIX D - STATEMENT OF INVESTMENT POLICY

1.0 Policy:

This investment policy is intended to outline the guidelines and practices to be used in effectively managing the SMART District (District's) available cash and investment portfolio. District monies not required for immediate cash requirements will be invested in compliance with the California Government Code Section 53600, et seq.

2.0 Scope:

This policy applies to all the financial assets accounted for in the District's Comprehensive Annual Financial Report and any new fund created by the District, unless specifically exempted. The investment of bond proceeds will be governed by the provisions of relevant bond documents.

3.0 Prudence:

The Board of Directors and Chief Financial Officer adhere to the guidance provided by the "prudent investor rule," California Government Code Section 53600.3, which obligates a fiduciary to ensure that "when investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency. Within the limitations of this section and considering individual investments as part of an overall strategy, investments may be acquired as authorized by law."

4.0 Objectives:

In accordance with California Government Code Section 53600.5, and in order of importance, the Chief Financial Officer shall adhere to the following three criteria:

- (a) Safety of Principal – Safety of principal is the foremost objective of the investment program. Investments of the District shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio.
- (b) Liquidity – Investments shall be made whose maturity date is compatible with cash flow requirements and which will permit easy and rapid conversion into cash without substantial loss of value.
- (c) Return on Investment – The District's investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the District's investment risk constraints and the cash flow characteristics of the portfolio.

5.0 Delegation of Authority:

The authority of the Board to purchase or sell securities for the District's portfolio, may be delegated by the Board to the Chief Financial Officer, who shall thereafter assume full responsibility for those transactions until the delegation of authority is revoked. The Chief

Financial Officer shall act in accordance with established written procedures and internal controls for the operation of the investment program consistent with this investment policy.

The oversight responsibility for the investment program is hereby delegated to the Chief Financial Officer who shall monitor and review all investments for consistency with this Investment Policy.

The Chief Financial Officer may delegate investment decision making and execution authority to an independent SEC-registered investment advisor. The advisor shall comply with this Policy and such other written instructions as are provided by the Chief Financial Officer.

6.0 Investment Procedures:

The Chief Financial Officer shall establish written operational procedures pertaining to the investment of District funds as needed. These procedures shall be compliant with the parameters and limits set forth by this investment policy. The procedures should regulate actions regarding safekeeping, repurchase agreements, wire transfer agreements, banking service contracts, and collateral/depository agreements. Such procedures shall include explicit delegation of authority to persons responsible for investment transactions. No person may engage in an investment transaction except as provided under the terms of this policy and the procedures established by the Chief Financial Officer.

7.0 Ethics and Conflicts of Interest:

Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. Employees and investment officials shall disclose any material interests in financial institutions with which they conduct business to the Chief Financial Officer. They shall further disclose any personal financial/investment positions that could be related to the performance of the investment portfolio. Employees and officers shall refrain from undertaking personal investment transactions with the same individual with whom business is conducted on behalf of the District.

8.0 Authorized Financial Dealers and Institutions:

For brokers/dealers of government securities and other investments, the Chief Financial Officer shall select only brokers/dealers who are licensed and in good standing with the California Department of Securities, the Securities and Exchange Commission, the National Association of Securities Dealers or other applicable self-regulatory organizations. Before engaging in investment transactions with a broker/dealer, the Chief Financial Officer shall obtain a signed verification form that attests the individual has reviewed the District's Investment Policy and intends to present only those investment recommendations and transactions to the District that is appropriate under the terms and conditions of the Investment Policy.

If an Investment Advisor is authorized to conduct investment transactions on the District's behalf, the Investment Advisor may use their own list of approved broker/dealers and financial institutions for investment purposes.

9.0 Authorized and Suitable Investments:

The District is governed by the California Government Code, Sections 53600, *et seq.* Within the context of these limitations, the investments listed below are authorized. Those investments not identified are considered to be ineligible.

1. **U.S. Treasury Obligations.** United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the full faith and credit of the United States are pledged for the payment of principal and interest.
2. **U.S. Agency Obligations.** Federal agency or United States government-sponsored enterprise obligations, participations, or other instruments, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government-sponsored enterprises.
3. **California State and Local Agency Obligations.** Obligations of the State of California or any local agency within the state, including bonds payable solely out of revenues from a revenue producing property owned, controlled or operated by the state or any local agency or by a department, board, agency or authority of the state or any local agency.
4. **Other State Obligations.** Registered treasury notes or bonds of any of the other 49 United States in addition to California, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by a state or by a department, board, agency, or authority of any of the other 49 United States, in addition to California.
5. **Bankers' Acceptances.** Time drafts or bills of exchange that are drawn on and accepted by a commercial bank and brokered to investors in the secondary market. The maximum maturity of an issue will be 180 days. Securities eligible for investment under this subdivision shall be rated in the highest letter and number category by nationally recognized statistical-rating organization. The maximum exposure shall be no more than 40% of the portfolio value. However, no more than 30 percent of the agency's money may be invested in the bankers' acceptances of any one commercial bank pursuant to this section.
6. **Commercial Paper.** Commercial paper of "prime" quality of the highest ranking or of the highest letter and number rating as provided for by a nationally recognized statistical-rating organization. The entity that issues the commercial paper shall meet all of the following conditions in either paragraph a or paragraph b:
 - a. The entity meets the following criteria: (i) Is organized and operating in the United States as a general corporation. (ii) Has total assets in excess of five hundred million dollars (\$500,000,000). (iii) Has debt other than commercial paper, if any, that is rated "AA" or higher by a nationally recognized statistical-rating organization.

- b. The entity meets the following criteria: (i) Is organized within the United States as a special purpose corporation, trust, or limited liability company. (ii) Has program wide credit enhancements including, but not limited to, over collateralization, letters of credit, or surety bond. (iii) Has commercial paper that is rated “AA” or higher, or the equivalent, by a nationally recognized statistical-rating organization.

Eligible commercial paper shall have a maximum maturity of 270 days or less. The District may invest no more than 25 percent of its money in eligible commercial paper. The District may purchase no more than 10 percent of the outstanding commercial paper of any single issuer.

- 7. **Medium-Term Notes.** Medium-term notes are defined in Government Code Section 53601 as all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Notes eligible for investment under this subdivision shall be rated “AA” or better by a nationally recognized statistical-rating organization. Purchases of medium-term notes shall not include other instruments authorized by section 53601 and may not exceed 30% of the portfolio value.
- 8. **Negotiable Certificates of Deposit.** Negotiable certificates of deposit issued by a nationally or state-chartered bank, a savings association or a federal association (as defined by Section 5102 of the Financial Code), a state or federal credit union, or by a state-licensed branch of a foreign bank. Securities eligible for investment under this subdivision shall be rated in the highest letter and number category by a nationally recognized rating service for short-term ratings (A-1/P1/F-1) and AA or better for longer-term ratings. Purchases of negotiable certificates of deposit may not exceed 30 percent of the District’s aggregate portfolio.
- 9. **Time Deposits.** The District may invest in non-negotiable time deposits (CDs) that are FDIC insured or fully collateralized in a state or national bank, savings association or federal association, federal or state credit union located in California, including U.S. branches of foreign banks licensed to do business in California. To be eligible to receive local agency deposits, a financial institution must receive a minimum overall “satisfactory rating” for meeting the credit needs of California Communities in its most recent evaluation. CDs are required to be collateralized as specified under Government Code Section 53630 et seq. The District, at its discretion, may waive the collateralization requirements for any portion that is covered by federal deposit insurance. The District shall have a signed agreement with any depository accepting District funds per Government Code Section 53649. No deposits shall be made at any time in CDs issued by a state or federal credit union if a member of the Governing Council or the Finance Director serves on the board of directors or any committee appointed by the board of directors of the credit union. In accordance with Government Code Section 53638, any

deposit shall not exceed that total shareholder's equity of any depository bank, nor shall the deposit exceed the total net worth of any institution.

10. **Local Agency Investment Fund (LAIF)** is a pooled investment fund through the State Chief Financial Officer. Deposits for the purpose of investment in the Local Agency Investment Fund of the State Treasury may be made up to the maximum amount permitted by State Treasury policy.
11. **Money Market Funds.** The Chief Financial Officer may invest in shares of beneficial interest issued by diversified management companies that are money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (Government Code Section 53601(k).)

The following criteria will be used in evaluating companies:

- a. Attain the highest-ranking letter and numerical rating provided by not less than two nationally recognized rating services; or
 - b. Have an investment advisor registered or exempt from registration with the Securities and Exchange Commission with not less than five (5) years' experience managing money market mutual funds and with assets under management in excess of \$500,000,000.
 - c. The maximum purchase price of shares shall not exceed 20% of the portfolio. However, no more than 10 percent of the agency's funds may be invested in shares of beneficial interest of any one mutual fund.
12. **Local Government Investment Pools.** Shares of beneficial interest issued by a joint powers authority organized pursuant to Government Code Section 6509.7 that invests in the securities and obligations authorized in subdivisions (a) to (o) of Government Code Section 53601, inclusive. Each share shall represent an equal proportional interest in the underlying pool of securities owned by the joint powers authority. To be eligible under this section, the joint powers authority issuing the shares shall have retained an investment adviser that meets all of the following criteria:
 - a. The adviser is registered or exempt from registration with the Securities and Exchange Commission.
 - b. The adviser has not less than five years of experience investing in the securities and obligations authorized in subdivisions (a) to (o) Government Code Section 53601, inclusive.
 - c. The adviser has assets under management in excess of five hundred million dollars (\$500,000,000).

Credit criteria and sectors and issuers percentages for investments listed in this section will be determined at the time the security is purchased. A decline in the overall investment balances that causes the percent to any investment above its maximum policy limit will not be considered out of compliance. The District may from time to time be invested in a security whose rating is downgraded. In the event a rating drops below the minimum allowed rating category for that given investment type, the Chief Financial Officer shall notify the District General Manager and District Council and recommend a plan of action.

10.0 Prohibited Investments:

Under the provisions of California Government Code Sections 53601.6 and 53631.5, the District shall not invest any funds covered by this Investment Policy in inverse floaters, range notes, mortgage-derived, interest-only strips or any investment that may result in a zero-interest accrual if held to maturity.

11.0 Collateralization:

Collateralization is required on Certificates of Deposit as per California Government Code section 53601. The collateralization level for certificates of deposit is 100% of market value of principal and accrued interest.

The entity chooses to limit collateral to the following: U.S. Treasuries and Federal Agency Obligations. Collateral will always be held by an independent third party with whom the entity has a current custodial agreement. A clearly marked evidence of ownership (safekeeping receipt) must be supplied to the entity and retained. The right of collateral substitution is granted.

12.0 Safekeeping and Custody:

All securities purchased may be delivered versus payment ("DVP") basis and held in safekeeping pursuant to a safekeeping agreement.

13.0 Maximum Maturities:

To the extent possible, the District will attempt to match its investments with anticipated cash flow requirements. For certain instruments, the term of the investment is limited by market convention or as otherwise prescribed herein. No investments may be acquired that exceed five (5) years, unless approved by the Board at least 90 days in advance of the purchase.

14.0 Internal Control:

The Chief Financial Officer shall establish an annual process of independent review by an external auditor. This review will provide internal control by assuring compliance with policies and procedures. The Chief Financial Officer may, at any time, further restrict the securities approved for investment as deemed appropriate.

15.0 Performance Standards:

The investment portfolio will be designed to obtain a market average rate of return during budgetary and economic cycles, taking into account the District's investment risk constraints and cash flow needs.

16.0 Reporting:

In accordance with Government Code Section 53607, the Chief Financial Officer shall submit an annual report to the Board indicating the types of investment by fund, institution, date of maturity, and amount of deposit, and shall provide the current market value of all securities with a maturity of more than twelve (12) months, rates of interest, and expected yield to maturity.

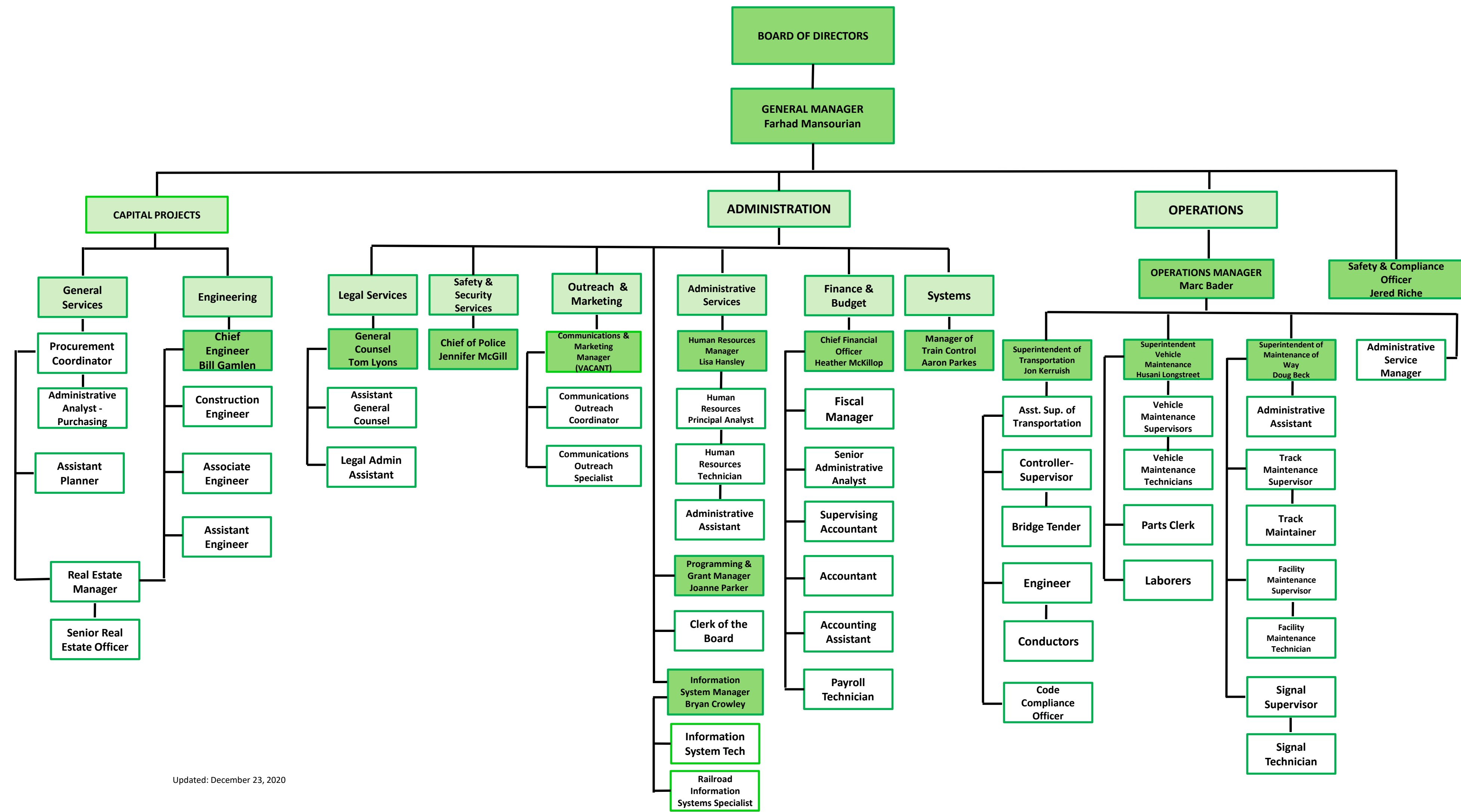
17.0 Investment Policy Adoption:

The Chief Financial Officer may, at any time, further restrict the securities approved for investment as deemed appropriate.

Additionally, the Chief Financial Officer shall annually send a copy of the current Investment Policy to all approved dealers. Each dealer is required to return a signed statement indicating receipt and understanding of the District's investment policies.

APPENDIX E – ORGANIZATION CHART

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT - ORGANIZATION CHART





June 2, 2021

David Rabbitt, Chair
Sonoma County Board of Supervisors

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

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Damon Connolly
Marin County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Susan Gorin
Sonoma County Board of Supervisors

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Farhad Mansourian
General Manager

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

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

SUBJECT: Authorize the General Manager to award Service Agreement (OP-SV-21-002) to Empire Cleaners for laundry, dry cleaning and pressing services for SMART-owned employee uniforms in the amount of \$180,000.

Dear Board Members:

RECOMMENDATION:

Authorize the General Manager to award Service Agreement (OP-SV-21-002) to Empire Cleaners for laundry, dry cleaning and pressing services for SMART-owned employee uniforms in the amount of \$180,000.

SUMMARY:

SMART contracts for laundry, dry cleaning and pressing services for SMART-owned employee uniforms. Services are provided for approximately 30 Operations and Transportation staff, including SMART Engineers and Conductors.

A formal Invitation for Bid was issued to procure these services. The scope of work called for the pick-up, delivery, laundry, and dry cleaning of SMART uniforms and includes spot removal services and button replacement at no extra charge. SMART received a total of 2 bids from the following vendors:

1. Empire Cleaners
2. Fiat Luxx DBA Expert Discount Cleaners

An Invitation for Bid is awarded to the lowest responsive responsible bidder. Of the two bids received, Empire Cleaners was the lowest bidder. Empire Cleaners has provided SMART with reliable and quality service over the past five years and SMART expects this level of service to continue with the award of this Agreement.

The not-to-exceed amount of \$180,000.00 for the base term of three years provides contract capacity and anticipates eventual board approval of the return to the full operating schedule. There is no minimum or maximum guarantee of work provided under this Agreement and SMART would only be invoiced for actual per item cleaning costs.

Staff recommends authorizing the General Manager to award Service Agreement (OP-SV-21-002) to Empire Cleaners for laundry, dry cleaning and pressing services for SMART-owned employee uniforms in the amount of \$180,000.

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

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

Very truly yours,

 /s/
Ken Hendricks
Procurement Coordinator

Attachment(s): Empire Cleaners Service Agreement No. OP-SV-21-002

SERVICE AGREEMENT

This agreement ("Agreement") dated as of July 1, 2021 ("Effective Date") is by and between the Sonoma-Marín Area Rail Transit District (hereinafter "SMART"), and Empire Cleaners (hereinafter "Service Provider").

RECITALS

WHEREAS, Service Provider represents that it is a duly qualified dry-cleaning and laundry service, experienced in the areas of dry cleaning and laundering uniforms and related services; and

WHEREAS, in the judgment of the Board of Directors of SMART or District, it is necessary and desirable to employ the services of Service Provider for dry cleaning and laundering service of uniforms required by Operations Department personnel.

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 Administrative Manager or designee (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 Service Provider will establish and agree on a specific task for the project.

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

maximum amount of work under this Agreement.

ARTICLE 4. SCOPE OF SERVICES.

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

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

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

Section 4.04 Assigned Personnel.

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

ARTICLE 5. PAYMENT.

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

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

Section 5.02 Service Provider shall be paid in accordance with the rates established in **Exhibit B**; provided, however, that total payments to Service Provider shall not exceed \$180,000.00, without the prior written approval of SMART. Service Provider shall submit its invoices in arrears on a monthly basis in a form approved by the Chief Financial Officer. The invoices shall show or include: (i) SMART's contract number (ii) dates of service (iii) Service Provider's Account Manager contact information (iv) a count and description of each SMART staff member's items cleaned during the dates of service and cleaning cost per item (v) copies of receipts for reimbursable materials/expenses, if any. All reimbursable expenses must comply with SMART's Travel Guidelines and must receive prior approval. Service Provider's reimbursement for materials/expenses shall not include items already included in Service Provider's overhead as may be billed as a part of its labor rates set forth in **Exhibit B**. SMART does not reimburse Service Provider for travel time.

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

ARTICLE 6. TERM OF AGREEMENT.

Section 6.01 The term of this Agreement shall remain in effect until June 30, 2024, with two, one-year options to renew thereafter at SMART's discretion unless terminated earlier in accordance with the provisions of **Article 7** below.

ARTICLE 7. TERMINATION.

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

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

Section 7.03 Delivery of Work Product and Final Payment Upon Termination. In the event of termination by either party, Service Provider, 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, Service Provider shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Service Provider bear to the total services otherwise required to be performed for such total payment; provided, however, that if services are to be paid on an hourly or daily basis, then Service Provider shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to termination times the applicable hourly or daily rate; provided further that if SMART terminates the Agreement for cause pursuant to **Section 7.02**, SMART shall deduct from such amount the amount of damage, if any, sustained by SMART by virtue of the breach of the Agreement by Service Provider.

Section 7.05 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

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

ARTICLE 9. INSURANCE.

With respect to performance of work under this Agreement, Service Provider shall maintain and shall require all of its Subcontractors, Consultants, and other agents to maintain,

insurance as described below. If the Service Provider maintains broader coverage and/or higher limits than the minimums shown below, SMART requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Service Provider. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SMART.

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.

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.

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.

Pollution Liability. Pollution Liability insurance applicable to the work being performed, with a limit no less than \$2,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one year.

Section 9.01 Endorsements. Prior to commencing work, Service Provider shall file Certificate(s) of Insurance with SMART evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Said endorsements and Certificate(s) of Insurance shall stipulate:

- (a) SMART, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Service Provider including materials, parts or equipment furnished in connection with such work or operations.
- (b) That the policy(ies) is Primary Insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim which Service Provider is liable, up to and including the total limit of liability, without right of contribution from any other insurance effected or which may be effected by the Insureds.
- (c) Inclusion of the Insureds as additional insureds shall not in any way affect its rights either as respects any claim, demand, suit or judgment made, brought or recovered against Service Provider. Said policy shall protect Service Provider and the Insureds in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable

if only one interest had been named as an insured.

- (d) Service Provider hereby grants to SMART a waiver of any right to subrogation which any insurer of said Service Provider may acquire against SMART by virtue of the payment of any loss under such insurance. Service Provider agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not SMART has received a waiver of subrogation endorsement from the insurer.
- (e) The insurance policy(ies) shall be written by an insurance company or companies acceptable to SMART. Such insurance company shall be authorized to transact business in the state of California.

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

Section 9.03 Claims Made Coverage. If any insurance specified above is written on a claims-made coverage form, Service Provider shall:

- (a) Ensure that the retroactive date is shown on the policy, and such date must be before the date of this Agreement or beginning of any work under this Agreement.
- (b) Maintain and provide evidence of similar insurance for at least 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, Service Provider shall purchase "extending reporting" coverage for a minimum of three (3) years after completion of the work.

Section 9.04 Documentation. The following documentation shall be submitted to SMART:

- (a) Properly executed Certificates of Insurance clearly evidencing all coverages and limits required above. Said Certificates shall be submitted prior to the execution of this Agreement. Service Provider agrees to maintain current Certificates of Insurance evidencing the above-required coverages and limits on file with SMART for the duration of this Agreement.
- (b) Copies of properly executed endorsements required above for each policy. Said

endorsement copies shall be submitted prior to the execution of this Agreement. Service Provider agrees to maintain current endorsements evidencing the above-specified requirements on file with SMART for the duration of this Agreement.

- (c) Upon SMART's written request, Service Provider shall provide certified copies of the insurance policies to SMART. Said policy copies shall be submitted within thirty (30) days of SMART's request. After the Agreement has been signed, signed Certificates of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.

Section 9.05 Policy Obligations. Service Provider's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

Section 9.06 Material Breach. If Service Provider, for any reason, fails to maintain insurance coverage, which is required pursuant to this Agreement, the same shall be deemed a material breach of this Agreement. SMART, in its sole option, may terminate this Agreement and obtain damages from Service Provider resulting from said breach. Alternatively, SMART may purchase such required insurance coverage, and without further notice to Service Provider, SMART may deduct from sums due to Service Provider any premium costs advanced by SMART for such insurance. These remedies shall be in addition to any other remedies available to SMART.

ARTICLE 10. PROSECUTION OF WORK.

When work is requested of Service Provider 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, high water, or other Act of God, the time for Service Provider's performance of this Agreement shall be extended by a number of days equal to the number of days Service Provider 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 General Manager in a form approved by SMART Counsel. The Board of Directors, General Manager or SMART 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 Service Provider to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Service Provider shall be entitled to no compensation whatsoever for the performance of such work. Service Provider further expressly waives any and all right or remedy by way of restitution and quantum meruit

for any and all extra work performed without such express and prior written authorization of SMART.

ARTICLE 12. REPRESENTATIONS OF SERVICE PROVIDER.

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

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

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

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

Section 12.05 Conflict of Interest. Service Provider covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Service Provider further covenants that in

the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by SMART, Service Provider shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with SMART disclosing Service Provider's or such other person's financial interests.

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

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

Section 12.08 Ownership and Disclosure of Work Product. All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Service Provider and other agents in connection with this Agreement shall be the property of SMART. SMART shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Service Provider shall promptly deliver to SMART all such documents, which have not already been provided to SMART in such form or format, as SMART deems appropriate. Such documents shall be and will remain the property of SMART without restriction or limitation. Service Provider may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of SMART.

ARTICLE 13. DEMAND FOR ASSURANCE.

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

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

ARTICLE 14. ASSIGNMENT AND DELEGATION.

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

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

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

If to SMART Manager:	Sonoma-Marín Area Rail Transit District Attn: Nina West 3748 Regional Parkway Santa Rosa, CA 95403 nwest@sonomamarintrain.org 707-794-3329
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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
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If to Service Provider:	Empire Cleaners Attn: David Kassis 203 Santa Rosa Avenue Santa Rosa, CA 95404 srdrycleaning@gmail.com 707-542-4992
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When a notice, invoice or payment is given by a generally recognized overnight courier service, the notice, invoice or payment shall be deemed received on the next business day. When a copy of a notice, invoice or payment is sent by facsimile or email, the notice, invoice or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, invoice or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, invoices and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

ARTICLE 16. MISCELLANEOUS PROVISIONS.

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

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

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

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

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

Section 16.06 Captions. The captions in this Agreement are solely for

convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

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

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

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

THIS SPACE INTENTIONALLY LEFT BLANK

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

EMPIRE CLEANERS

By: _____

Its: _____

Date: _____

SONOMA-MARIN AREA RAIL TRANSIT (SMART)

By: _____
Farhad Mansourian, General Manager

Date: _____

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

By: _____
Ken Hendricks, Procurement Coordinator

Date: _____

APPROVED AS TO FORM FOR SMART:

By: _____
District Counsel

Date: _____

EXHIBIT A

SCOPE OF WORK & TIMELINE

I. General Objective

SMART is contracting with Empire Cleaners (Service Provider) to provide dry cleaning, laundry, and pressing services for SMART-owned employee uniforms. The uniforms will be picked up and dropped off at SMART's Rail Operations Center in Santa Rosa, California. Services are to be provided for approximately 30 Operations and Transportation staff. Uniform items are labelled with the employee's name. Service Provider shall provide spot removal and button replacement on the uniform items as necessary at no extra charge. The number of staff requiring services may increase or decrease over time.

II. Project Manager

All work shall be initiated in writing, coordinated, and approved by the SMART Manager or designee.

III. Location and Access to the Rail Operations Center (ROC)

- The ROC is located at 3748 Regional Parkway, Santa Rosa, California.
- The ROC is a secure facility. Upon arrival at the ROC, Service Provider shall call the phone number on the gate to request access. Service Provider shall have proper identification available for inspection at all times while at the ROC.

IV. Services

- The uniform items will be placed for pickup and delivery in a location at the ROC as specified by the SMART Manager.
- Service Provider shall pick up and deliver uniform items twice weekly between 8:00 a.m. and 4:00 p.m., Monday through Friday. The schedule will be determined by the SMART Manager.
- A point of service tracking system shall be used (which may be a dry-cleaning/laundry paper tagging system) that will enable individual SMART employees to request services as needed and to allow SMART and Service Provider to keep track of each SMART employee's garments. The tracking system shall also provide a means by which SMART can match items serviced to Service Provider's invoices.

- In addition to laundering and pressing the uniform items, Service Provider shall spot clean each garment, including shirt collars, as necessary and replace missing buttons as necessary, at no charge.
- Cleaned items shall be returned to the ROC within two days from pick up.
- Service Provider shall provide laundry bags for each SMART employee to use.
- Service Provider shall launder items according to label instructions in cold water using safe cleaning substances in accordance with Federal, State and Local laws and regulations. Service Provider shall have alternative cleaning agents available at SMART's request.

V. Invoices

Service Provider shall submit one (1) invoice monthly that includes itemized activity for the prior four weeks. The invoice shall include the following details:

- Service Provider's Invoice number
- SMART Contract Number
- Dates of service
- Service Provider's Account Manager Contact Information
- For items picked up for service, Service Provider shall provide a count and description of each staff member's items laundered and the item cleaning cost.

VI. Acceptance Criteria

The SMART Manager shall monitor the Service Provider's performance and will authorize payment on all invoices upon successful completion of the work.

EXHIBIT B
SCHEDULE OF RATES

Item Description	Per Item Rate
Engineer/Conductor button down white shirts	\$3.75
Polo shirts, gray or black	\$3.00
Cargo pants, cotton/polyester	\$4.50
Coats, tactical jackets	\$8.00
Button down shirts, grey	\$2.95

Per Item Rate includes weekly cleaning service, pickup, delivery, taxes and any required or requested spot cleaning or button replacement.

Upon completion of the initial first three years of service, and prior to the commencement of each optional year of this Agreement, Service Provider may, upon 30 days written notice to SMART, request an increase in the contracted 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.

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.

2. Fly America.

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

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

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

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

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

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

4. Energy Conservation.

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

5. Clean Water.

The Contractor agrees:

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

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

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

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

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

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with

its instructions as amended by “Government wide Guidance for New Restrictions on Lobbying,” 61 Fed. Reg. 1413 (1/19/96).

- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

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

Date: _____

Company Name: _____

Print Name: _____

Title: _____

Signature: _____

7. Federal Changes.

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

8. Clean Air.

The Contractor agrees to:

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

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

9. Recovered Materials and Solid Wastes.

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

10. No Obligation by the Federal Government.

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

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

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

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

(b) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

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

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

(b) Termination for Default. If the Contractor does not deliver supplies in accordance with the Agreement delivery schedule, or, if the Agreement is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, SMART may terminate this Agreement

for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the Agreement price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

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

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

If Contractor fails to remedy to SMART's satisfaction the breach or default of any of the terms, covenants, or conditions of this Agreement within ten (10) days after receipt by Contractor of written notice from SMART setting forth the nature of said breach or default, SMART shall have the right to terminate the Agreement without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude SMART from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

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

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

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

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

13. Suspension and Debarment.

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

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

Suspension and Debarment Certificate

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

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

Name of Contractor:_____

By:_____

Print Name:_____

Title:_____

Date: _____

14. Civil Rights.

The following requirements apply to the Agreement:

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

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

(1) Race, Color, Creed, National Origin, Sex In accordance with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60, *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, national origin, sex, sexual orientation, gender identity, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(2) Age In accordance with section 4 of the Age Discrimination in

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

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

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

15. Disputes.

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

16. Performance During Dispute.

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

17. Claims for Damages.

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

18. Remedies.

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

19. Rights and Remedies.

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

20. Disadvantaged Business Enterprises.

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

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

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

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

(d) The contractor shall promptly pay any and all subcontractors by an instrument that guarantees availability of funds immediately upon deposit of said instrument. The contractor shall include, in its monthly invoice submission to SMART, amounts to pay for all subcontractors' acceptable invoices, no later than 30 days after receipt of such invoices. Unless otherwise approved in writing by SMART, the contractor shall, within

ten (10) days after receipt of the payment made by SMART, pay to each of its immediate subcontractors for satisfactory performance of its contract, the amounts to which they are entitled, after deducting any prior payments and any amount due and payable to the contractor by those subcontractors. Any delay or postponement of such payment may take place only for good cause and with SMART's prior written approval. If the contractor determines the work of the subcontractors to be unsatisfactory, the contractor must immediately notify in writing SMART (with a separate notice to the Liaison Officer if the subcontractor is a DBE) and state the reasons. Failure by the contractor to comply with this requirement will be construed to be breach of contract and may be subject to sanctions as specified in the contract.

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

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

21. Exclusionary or Discriminatory Specifications.

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

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

Absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to Contractor, or any other third party in connection with the performance of the Agreement. Notwithstanding any concurrence

provided by the Federal Government in or approval of any solicitation, contract, or subagreement, the Federal Government continues to have no obligations or liabilities to any party, including the Contractor.

23. Geographic Restrictions.

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

24. Access to Records and Reports.

Contractor shall comply with the following requirements:

- (a) **Record Retention.** Contractor shall, during the course of the Agreement and for three years after final payment, retain and maintain complete readily accessible records, documents, reports, contracts, and supporting materials relating to the Agreement as SMART may require.
- (b) **Access to Records.** Contractor shall permit SMART, the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all project work, materials, payrolls, and other data, and to audit the books, records, and accounts of Contractor and its subcontractors pertaining to the Agreement. In accordance with 49 U.S.C. § 5325(g), Contractor shall require each subcontractor to permit SMART, the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that subcontractor agreement and to audit the books, records, and accounts involving that subcontractor agreement as it affects the Agreement.
- (c) **State Audit, Inspection, Access to Records and Retention of Records Requirements.** Contractor and its subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred costs by line item for the project. Contractor and its subcontractors' accounting systems shall conform to generally accepted accounting principles (GAAP) and all records shall provide a breakdown of total costs charged to the project, including properly executed payrolls, time records, invoices and vouchers as well as all accounting generated reports. Contractor and its subcontractors shall permit representatives of the State and State Auditor to inspect, examine, make excerpts or transcribe Contractor and its subcontractors' work, documents, papers, materials, payrolls, books, records, accounts, any and all data relevant to this Agreement at any reasonable time and to audit and verify statements, invoices or bills submitted by Contractor and its subcontractors pursuant to this Agreement, and shall provide copies thereof upon request and shall provide such assistance as may be reasonably required in the course of such audit or inspection.

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

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

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

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

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

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

25. ADA Access.

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

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

26. Fair Labor Standards Requirements.

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

27. Contract Work Hours and Safety Standards Act.

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

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

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

28. State Fair Employment Practices.

In the performance of work under this Agreement, Contractor and its subcontractors will not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (including cancer), age (over 40), marital status and denial of family care leave. Contractor and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900 (a-f), set forth in chapters of Division 4 of Title 2 of the California Code of Regulations are incorporated into this agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Contractor and its subcontractors shall include the nondiscrimination and compliance provisions of this clause in all subcontractor agreements to perform work under this agreement.

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

29. Metric System.

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

30. Environmental Protection.

Contractor shall comply with the following requirements:

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

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

(c) Contractor shall report and require each subcontractor at any tier to report any violation of these requirements resulting from any Contract activity of Contractor or subcontractor to FTA and the appropriate U.S. EPA Regional Office.

31. Privacy Act.

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

32. Veterans Preference.

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

1. Will give a hiring preference to veterans, as defined in 5 U.S.C. §2108, who have the skills and abilities required to perform construction work required

under Agreement in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53; and

2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

33. Safe Operation of Motor Vehicles.

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

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

- (b) Distracted Driving, Including Text Messaging While Driving. Contractor agrees to comply with Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” 23 U.S.C. §402, U.S. DOT Order 3902.10, “Text Messaging While Driving”, and U.S. DOT Special Provision pertaining to Distracted Driving:

- a. Safety. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle the company owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Agreement, or when performing any work for or on behalf of SMART.
- b. Contractor agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

34. Alcohol Misuse and Prohibited Drug Use.

Contractor and all Subcontractors shall comply with:

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

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

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any SMART requests which would cause SMART to be in violation of the FTA terms and conditions.



June 2, 2021

David Rabbitt, Chair
Sonoma County Board of Supervisors

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

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Damon Connolly
Marin County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Susan Gorin
Sonoma County Board of Supervisors

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Farhad Mansourian
General Manager

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

SUBJECT: Authorize the General Manager to award contract OP-PS-21-002 with Portola Systems Inc. for ongoing management and maintenance support for the existing SMART Station Network for an initial term of three years with a total not-to-exceed amount of \$722,460.

Dear Board Members:

RECOMMENDATION:

Authorize the General Manager to award contract OP-PS-21-002 with Portola Systems Inc. for ongoing management and maintenance support for the existing SMART Station Network for an initial term of three years with a total not-to-exceed amount of \$722,460.

SUMMARY:

SMART's station network encompasses the configuration of the communication transmission system and network equipment necessary to allow for data, voice, and video transmission from station devices to the SMART Data Center. Station devices that are included in the station network include, but are not limited to:

- Ticket Vending Machines
- Clipper Interface Devices
- Security Cameras and Access Control
- Emergency Telephones
- Wi-Fi
- Public Address systems

SMART's station network must be monitored and maintained 24 hours a day, 7 days per week, and 365 days per year to ensure that SMART maintains connectivity to all station network resources required for running a safe and efficient operation.

We contract with a third-party consultant to monitor and maintain the network, as well as manage SMART's Cisco SmartNet licensing and contracts for the SMART equipment tied to the network.

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

The third-party consultant is also responsible for integrating new or replacement equipment into the network.

The existing contract for station network monitoring and maintenance is set to expire June 30, 2021. In anticipation of the contract expiration, SMART issued a Request for Proposal to procure the next contract.

SMART received four proposals in response from the following firms:

1. NetXperts, Inc.
2. Portola Systems, Inc.
3. Tilson Technology Management
4. W. Bradley Electric, Inc.

SMART's evaluation committee reviewed the four proposals using the evaluation criteria identified in the Request for Proposal. Following the review and evaluation of all proposals received, the evaluation committee selected to retain Portola Systems, Inc. as the firm providing the best overall value in terms of technical qualifications and price to the District.

Portola Systems has provided SMART with excellent monitoring and maintenance service for the past five years. Not only have they proven their dedication to SMART's success, but they proposed a lower cost than what SMART is currently paying for the same service.

Staff recommends authorizing the General Manager to award contract OP-PS-21-002 with Portola Systems Inc. for ongoing management and maintenance support for the existing SMART Station Network for an initial term of three years with a total not-to-exceed amount of \$722,460.

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

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

Very truly yours,

/s/
Ken Hendricks
Procurement Coordinator

Attachment(s): Portola Systems, Inc. Agreement No. OP-PS-21-002

AGREEMENT FOR CONSULTANT SERVICES

This agreement (“Agreement”), dated as of July 1, 2021 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District (hereinafter “SMART”), and Portola Systems, Inc. (hereinafter “Consultant”).

RECITALS

WHEREAS, Consultant represents that it is duly qualified and experienced in the areas of network design, configuration, maintenance, and related services; and

WHEREAS, in the judgment of the Board of Directors of SMART or District, it is necessary and desirable to employ the services of Consultant to provide management, maintenance and configuration support of the SMART Station Network (“SSN”).

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:

Exhibit A: Scope of Work & Timeline

Exhibit B: Schedule of Rates

Exhibit C: FTA & DOT Requirements

ARTICLE 3. REQUEST FOR SERVICES.

Section 3.01 Initiation Conference. SMART’s Information Systems Manager, or designee, will initiate all requests for services through an Initiation Conference, which may be in person, by telephone, or by email.

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

ARTICLE 4. SCOPE OF SERVICES.

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

Section 4.02 Cooperation With SMART. Consultant shall cooperate with the Information Systems Manager, or designee, 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.

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.

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.

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.

Consultant shall assign the following key personnel for the term of this Agreement:

Ryan Miller, Account Manager, Executive Vice President, Sr Network Architect
Steven Lumadue, Technical Account Manager, Senior Network Engineer
Rooein Nasiri, Senior Network Architect and Security Engineer
Juan Pulido, Senior Network Engineer,
James Brown, Network Engineer
Rich Coibion, Senior Systems Engineer

Dave Lozano, Senior Network Engineer
Ryan Brown, Senior Project Program and Resource Management

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 SMART's Information Systems Manager and the hours worked. SMART shall pay Consultant within 30 days after submission of the invoice.

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 \$722,460.00, 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 names and classifications of the persons performing the work; (iii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); (iv) copies of SmartNet receipts; and (iv) copies of receipts for reimbursable materials/expenses, if any. All reimbursable expenses must comply with SMART's Travel Guidelines and must receive prior approval. Consultant's reimbursement for materials/expenses shall not include items already included in Consultant's overhead as may be billed as a part of its labor rates set forth in **Exhibit B**. SMART does not reimburse Consultant for travel time.

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

ARTICLE 6. TERM OF AGREEMENT.

Section 6.01 The term of this Agreement shall remain in effect through June 30, 2024, with two (2) one-year options to extend thereafter unless terminated earlier in accordance with the provisions of **Article 7** below.

ARTICLE 7. TERMINATION.

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

Section 7.02 Termination for Cause. Notwithstanding any other provision of this Agreement, should 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.

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

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

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

Section 9.04 Professional Liability Errors and Omissions Insurance. Professional Liability insurance covering liability arising out of any negligent act, error or omission in performance of services in an amount no less than \$2,000,000 per occurrence. Coverage shall include, but not be limited to, claims involving infringement of intellectual property, copyright, trademark, invasion of privacy violations, information theft, release of private information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses. 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 SMART in the care, custody, or control of the Consultant.

This policy shall also provide 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 the Consultant.

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:

SMART, its officers, and employees shall be named as additional insured on all policies listed above, with the exception of Worker's Compensation and Professional Liability.

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.

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.

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.

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 named 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:

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;

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

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:

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. 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.

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.

Upon SMART's written request, Consultant shall provide certified copies of the insurance policies to SMART. Said policy copies shall be submitted within thirty (30) days of SMART's request. After the Agreement has been signed, signed Certificates of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.

Section 9.09 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 Information Systems Manager or General 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 Railroad Administration (FRA), state and local laws and regulations, 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. 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
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
bcrowley@sonomamarintrain.org
707-794-3083

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:

Portola Systems, Inc.
Attn: Ryan Miller
327 O'Hair Court Suite B
Santa Rosa, CA
rmiller@portolasystems.net
(o) 707-824-8800
(c) 707-495-8878

When a notice, invoice or payment is given by a generally recognized overnight courier service, the notice, invoice or payment shall be deemed received on the next business day. When a copy of a notice, invoice or payment is sent by facsimile or email, the notice, invoice or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, invoice or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, invoices and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

ARTICLE 16. MISCELLANEOUS PROVISIONS.

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

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

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

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

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

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

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

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

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

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

CONSULTANT: PORTOLA SYSTEMS, INC.

By: _____
Ryan Miller, Executive Vice President

Date: _____

SONOMA-MARIN AREA RAIL TRANSIT (SMART)

By: _____
Farhad Mansourian, General Manager

Date: _____

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

By: _____
Ken Hendricks, Procurement Coordinator

Date: _____

APPROVED AS TO FORM FOR SMART:

By: _____
District Counsel

Date: _____

EXHIBIT A

SCOPE OF WORK & TIMELINE

I. Overview

SMART is contracting with Portola Systems, Inc. to provide ongoing management and maintenance support for the existing SMART Station Network (“SSN”).

For purposes of this scope-of-work, the SSN encompasses the configuration of the communication transmission system and network equipment necessary to allow for data, voice, and video transmission from station devices to the SMART Data Center over SMART provided fiber optic backbone. Station devices include, but are not limited to, Ticket Vending Machines, Clipper Interface Devices, Security Cameras and Access Control, Emergency Telephones, Wi-Fi, and Public Address systems. Work shall include maintenance of point-to-point connections, from the SMART Data Center, to Fare Collection Vendor facilities. In addition to the existing equipment on SMART’s SSN, Consultant will also be tasked with integrating new equipment or replacement equipment into SMART’s SSN. As part of the management and monitoring of SMART’s SSN, the Consultant will be responsible for managing the Cisco SmartNet licensing and contracts for the equipment.

Due to the sensitivity of the information the Consultant will be working with, Consultant may be required to sign a Non-Disclosure and Confidentiality Agreement prior to performing any work.

II. Project Management

All work shall be initiated, scheduled, and reviewed by SMART’s Information Systems Manager, or designee, by written task order.

III. Scope of Work

The services to be performed by the Consultant while under Agreement are split into the following three tasks to support SMART’s Station Network.

Task 1: Cisco SmartNet Coverage

Task 2: Planned Station Network Management and Maintenance

Task 3: On-Call Support Services

If access to SMART’S right-of-way is required within the scope of services being provided, Consultant shall coordinate with SMART’s Project Manager to acquire a right-of-way Access Permit prior to any work being performed.

SMART's current Station Network primarily consists of the following types of devices:

Table. 1

Quantity	Type of Equipment
1	Monitoring Server
2	Firewalls in High Availability Pair
28	Uninterruptable Power Supply ("UPS") Units with Temperature Probes
48	Network Switches

SMART may incorporate and implement additional network hardware equipment into the SMART station network during the term of this Agreement. Consultant shall be expected to include these devices in the services described below. All Cisco devices must be covered by an active SmartNet Subscription during the duration of this agreement.

Task 1: CISCO SmartNet Coverage

Consultant shall provide SMART with Cisco SmartNet coverage for hardware and software associated with the SMART Station Network. Consultant shall provide SMART with the following Cisco SmartNet services as part of this task order:

1. 24/7 access to Cisco Technical Assistance Center to resolve critical issues with all devices covered under Cisco SmartNet.
2. Replacement of covered devices when required will take place within a four (4) hour delivery window.
3. All updates and upgrades of operating system software are provided for devices covered under Cisco SmartNet.
4. Security and Product alerts shall be provided for all covered devices to include:
 - a. Setting up an alert management workflow for determining which Cisco published product alerts and security advisories are relevant for the devices purchased.
5. Product lifecycle management for all covered devices to include:
 - a. Providing enhanced visibility into the installed base to quickly identify any Cisco products that are reaching end of life, end of sale, or end of support.

6. Service Coverage Management

- a. Including installation of regular base collection and flexible reporting capabilities to efficiently manage the Cisco devices and service contracts.

Since the determination of pricing for CISCO SmartNet coverage is highly dependent upon the type of equipment, equipment serial numbers, software installed on the equipment and other factors, the Consultant shall provide the Cisco SmartNet coverage at cost as a pass-through in this Agreement with receipt documentation submitted with the invoice.

Call for Repair Process

Calls for repair are carried-out by the Lead Engineer or by the Technical Account Manager. Any issue resulting in needed hardware replacement are address by Portola Systems' submitting a Hardware Replacement Request directly to Cisco. Hardware will be shipped to Portola Systems and configuration files will be restored from Portola's backup configuration data. An engineer is dispatched according to the severity level of the case and will work with all vendors impacted by the hardware outage to ensure a seamless restore of systems effected by the outage.

On-Hand Spare Equipment

Portola Systems commits to warehousing a spare IE5000 network switch, single mode SFP-LR network optics, and single-mode fiber patch cables to expedite calls-to-repair for SMART. Should a device fail, Portola Systems will dispatch with the necessary in-stock equipment to produce immediate results.

Task 2: Planned Station Network Support Services

Consultant shall perform the following services to monitor and manage SMART's existing station network:

1. 24x7x365 monitoring of station network functionality.
2. Provide 24x7 on-call support.
3. Installation of up to 2 software updates per year per device for the station network infrastructure hardware. Scheduling of these updates will need pre-approval from the Project Manager.
4. Weekly Check-in Phone Meetings with SMART's Project Manager to report on system issues, progress on system maintenance and upgrades, and future planning of SMART's Station Network.
5. Maintain updated network inventory of devices including port-level diagrams, device serial-numbers, MAC address tables, device host names, SmartNet contract numbers, and relevant equipment lifecycle details.

6. Perform network administration services and/or assist staff with network maintenance, management, and monitoring to ensure ongoing operation of critical infrastructure.
7. Conduct problem-solving, maintenance, and planning with outside consultants and support hotlines to resolve problems with vertical line-of-business systems (station ticketing, surveillance cameras, and other integrated systems as needed).
8. Provide management of warranties and perform warranty repair and replacement work.
9. Install proactive security patching and system software version updates for all systems.
10. Perform system restarts as directed and required after normal business hours and on weekends. Timing of these system restarts will be coordinated with the SMART Project Manager.
11. Conduct day-to-day administration of the SMART station network.

Task 3: On-Call Support Services

Consultant may be requested to perform additional services above those listed in Tasks 1 and 2. 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:

1. Provisioning or installing of new and/or additional network hardware. This does not include construction activities requiring a contractor's license.
2. Upgrades or reprogramming to add new capabilities or functionality to supported product.
3. Any additional work mutually agreed upon between SMART and Consultant.

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

1. SMART's Project Manager or designee 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.

IV. Timeline for Each Requirement or Task / Deliverables

Task 1: Cisco SmartNet Coverage

Consultant shall notify SMART's Project Manager four (4) months ahead of any pending Cisco SmartNet contract expiration. Consultant shall provide the renewal date of these contracts, along with the costs associated with the renewal options. Consultant shall work with SMART's Project Manager to determine the options to co-term the Cisco SmartNet contract expiration dates of contracts wherever possible. SMART will provide direction with Consultant to determine which devices will require SmartNet renewal.

Task 2: Planned Station Network Management and Maintenance

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

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

Some issues with the Station Network may be reported to the Consultant by SMART personnel. In this case, Consultant shall acknowledge the request within 1-hour of SMART contacting a technician or submitting a support ticket.

Task 3: On-Call Support Services

All work issued under this task order shall be completed based upon a mutually agreed upon date and time.

V. Response Times

The response time and time-to-resolution will be based on the priority of the issue or incident. The response times are listed below.

PRIORITY	RESPONSE SLA	DESCRIPTION
P0: CRITICAL	Up to 30 Minutes Immediate Response from Support Team	This is an emergency that significantly restricts the use of an entire system or network, and a critical business function is offline as a result. The entire organization is impacted (including but not limited to safety implications, revenue collection, or passenger boarding).
P1: HIGH	Up to 1-hour	The reported issue severely restricts an application and is negatively impacting the organization (including but not limited to safety implications, revenue collection, or passenger boarding). The key functions of that system are impacted, but the overall Station Network is functioning.
P2: MEDIUM	Up to 6-hours	The reported issue may restrict the use of one or more features of a single device, but operations, safety, and revenue collection are not severely impacted.
P3: LOW	Up to 24-hours	The reported issue or question is not significantly impacting productivity and little-to-no restrictions are impacting the features necessary for business functions.

VI. Hours of Operation

a. Standard Hours of Operation

Portola Systems standard hours of operation are 7:00AM-5:00PM, Monday-Friday. All partners are provided with dedicated Service Desk Ticket login credentials for logging support requests, as well as direct telephone access to the Service Desk for phone-in support requests. Portola provides special provisions for SMART to extend support hours Monday-Friday, weekends and holidays.

Field Technicians will be available for on-call for emergency dispatch with a 30-to-60 minute response time, for prescheduled/regular office visits, and on a fixed or as-needed basis.

b. Emergency and On-Call Operations

Portola Systems maintains an On-Call Afterhours Schedule to fulfill 24x7x365 emergency support requests with at least one (1) Lead Engineer always on-call. Response times will be typically 25-minutes and never longer than 60-minutes. On-call emergency requests are submitted via phone dispatch that are facilitated by both paging and afterhours ticketing systems.

Direct cell phone access to the Portola Account Manager and Executive Staff will be provided to SMART representatives.

VII. Acceptance Criteria

SMART's Information Systems Manager or designee shall review all work performed by the Consultant. If the work performed met SMART's requirements, SMART will issue a notice of acceptance and recommend the consultant submit an invoice for review. If the work was not performed per SMART's requirements, the 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

The rates included in this Exhibit B “Schedule of Rates” shall be maintained for the duration of this Agreement, including all term extension options utilized by SMART. The rates below include all mileage fees and travel time.

Task 1: Cisco SmartNet Coverage

Portola Systems, Inc. shall provide the Cisco SmartNet coverage at cost as a pass-through in this Agreement. Receipt documentation and SMART Manager approval must be submitted with the invoice for verification.

Task 2: Planned Station Network Management and Maintenance

Portola Systems, Inc. shall provide all services identified in this task for a fixed monthly fee of \$6,985.00.

Task 3: On-Call Support Services

Portola Systems, Inc. shall perform services under this task on a time and materials basis. Labor shall be invoiced based on the classification and hourly rates listed in the below table.

Classification	Hourly Rates
Partner / Executive Account Manager	\$200.00
Senior Engineer / Technical Account Manager	\$175.00
Mid-Tier Engineer	\$165.00
Staff Engineer / Help Desk Engineer	\$105.00
Administrative Support	\$85.00

Since Portola Systems maintains agreements on the National Cooperative Purchase Alliance Cooperative and GSA Schedule, materials quotes shall be provided based on the best price available to SMART in association with one of these approved cooperative agreements. However, if Portola Systems can source materials at a lower cost than these cooperative contracts, they will inform SMART’s Project Manager of the best price available. Every effort shall be made by Portola Systems, Inc. to provide SMART with the best price on materials.

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.

2. Fly America.

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

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

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

(a) to use privately owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities

pursuant to the underlying Agreement to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels;

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

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

4. Seismic Safety.

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 Seismic Safety Regulations, 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor further agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §7701 et seq. The Contractor also agrees to ensure that all work performed under this Agreement 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.

5. Energy Conservation.

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

6. Clean Water.

The Contractor agrees:

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

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

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

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

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

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

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any

person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

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

Date: _____

Company Name: _____

Print Name: _____

Title: _____

Signature: _____

8. Federal Changes.

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

9. Clean Air.

The Contractor agrees to:

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

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

10. Recovered Materials and Solid Wastes.

The Contractor agrees to comply with all the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA). The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that

contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. Furthermore, Contractor will comply with Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

11. No Obligation by the Federal Government.

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

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

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

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

(b) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

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

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

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

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

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

If Contractor fails to remedy to SMART's satisfaction the breach or default of any of the terms, covenants, or conditions of this Agreement within ten (10) days after receipt by Contractor of written notice from SMART setting forth the nature of said breach or default, SMART shall have the right to terminate the Agreement without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude SMART from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

(e) Termination for Convenience or Default (Architect and Engineering Contracts). SMART may terminate this Agreement in whole or in part, for SMART's convenience or because of the failure of the Contractor to fulfill the Agreement obligations. SMART shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the

Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to SMART all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Agreement, whether completed or in process.

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

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

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

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14. Suspension and Debarment.

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

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

Suspension and Debarment Certificate

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

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

Name of Contractor: _____

By: _____

Print Name: _____

Title: _____

Date: _____

15. Civil Rights.

The following requirements apply to the Agreement:

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

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

(1) Race, Color, Creed, National Origin, Sex In accordance with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60, *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, national origin, sex, sexual orientation, gender identity, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

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

16. 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.

17. Performance During Dispute.

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

18. Claims for Damages.

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

19. 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.

20. Rights and Remedies.

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

21. Disadvantaged Business Enterprises.

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

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

(b) The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or

such other remedy as the recipient deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

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

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

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

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

22. Exclusionary or Discriminatory Specifications.

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

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

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

24. Geographic Restrictions.

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

25. Access To Records and Reports.

Contractor shall comply with the following requirements:

- (a) **Record Retention.** Contractor shall, during the course of the Agreement and for three years after final payment, retain and maintain complete readily accessible records, documents, reports, contracts, and supporting materials relating to the Agreement as SMART may require.
- (b) **Access to Records.** Contractor shall permit SMART, the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all project work, materials, payrolls, and other data, and to audit the books, records, and accounts of Contractor and its subcontractors pertaining to the Agreement. In accordance with 49 U.S.C. § 5325(g), Contractor shall require each subcontractor to permit SMART, the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that subcontractor agreement and to audit the books, records, and accounts involving that subcontractor agreement as it affects the Agreement.
- (c) **State Audit, Inspection, Access to Records and Retention of Records Requirements.** Contractor and its subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred costs by line item for the project. Contractor and its subcontractors' accounting systems shall conform to generally accepted accounting principles (GAAP) and all records shall provide a breakdown of total costs charged to the project, including properly executed payrolls, time records, invoices and vouchers as well as all accounting generated reports. Contractor and its subcontractors shall permit representatives of the State and State Auditor to inspect, examine, make excerpts or transcribe Contractor and its subcontractors' work, documents, papers, materials, payrolls, books, records, accounts, any and all data relevant to this Agreement at any reasonable time and to audit and verify statements, invoices or bills submitted by Contractor and its subcontractors pursuant to this Agreement, and shall provide copies thereof upon request and shall provide such assistance as may be reasonably required in the course of such audit or inspection.

The State, its representatives and the State Auditor further reserve the right to examine,

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

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

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

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

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

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

26. ADA Access.

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

- (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (c) U.S. DOT regulations "Americans with Disabilities (DA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 38;
- (d) U.S. DOT regulations, "Nondiscrimination on the basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

- (e) U.S. Department of Justice (DOJ) regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. Part 36;
- (f) U.S. General Services Administration (GSA) regulations, “Accommodations for the Physically Handicapped,” 41 C.F.R. Subpart 101-19;
- (g) U.S. Equal Employment Opportunity Commission, “Regulations to implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630;
- (h) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,” 47 C.F.R. Part 64, Subpart F;
- (i) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. Part 609; and
- (j) Any implementing requirements FTA may issue.

27. Fair Labor Standards Requirements.

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

28. Contract Work Hours and Safety Standards Act.

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

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

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

29. State Fair Employment Practices.

In the performance of work under this Agreement, Contractor and its subcontractors will not unlawfully discriminate, harass or allow harassment, against any employee or

applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (including cancer), age (over 40), marital status and denial of family care leave. Contractor and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900 (a-f), set forth in chapters of Division 4 of Title 2 of the California Code of Regulations are incorporated into this agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Contractor and its subcontractors shall include the nondiscrimination and compliance provisions of this clause in all subcontractor agreements to perform work under this agreement.

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

30. Metric System.

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

31. Environmental Protection.

Contractor shall comply with the following requirements:

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

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

(c) Contractor shall report and require each subcontractor at any tier to report any

violation of these requirements resulting from any Contract activity of Contractor or subcontractor to FTA and the appropriate U.S. EPA Regional Office.

32. Privacy Act.

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

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

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

34. Rights in Data and Copyrights.

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

35. Patent Rights.

Contractor agrees that:

- (a) Depending on the nature of the Agreement, SMART and the Federal Government may acquire patent rights when the Contractor produces a patented or patentable

invention, improvement, or discovery;

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

36. Veterans Preference.

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

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

37. Safe Operation of Motor Vehicles.

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

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

- (b) Distracted Driving, Including Text Messaging While Driving. Contractor agrees to comply with Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," 23 U.S.C. §402, U.S. DOT Order 3902.10, "Text

Messaging While Driving”, and U.S. DOT Special Provision pertaining to Distracted Driving:

- a. **Safety.** The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle the company owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Agreement, or when performing any work for or on behalf of SMART.
- b. Contractor agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

38. Alcohol Misuse and Prohibited Drug Use.

Contractor and all Subcontractors shall comply with:

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

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

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any SMART requests which would cause SMART to be in violation of the FTA terms and conditions.



June 2, 2021

David Rabbitt, Chair
Sonoma County Board of Supervisors

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

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Damon Connolly
Marin County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Susan Gorin
Sonoma County Board of Supervisors

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Farhad Mansourian
General Manager

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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 Hogan Lovells, LLP Contract Amendment No. 1

Dear Board Members:

RECOMMENDATIONS:

Authorize the General Manager to execute Contract Amendment No. 1 with Hogan Lovells in the amount not to exceed \$350,000 for specialized legal services.

SUMMARY:

Hogan-Lovells, LLP has specialized legal expertise in variety of regulatory, transportation, federal, state and governmental agencies matters and has been assisting SMART with various legal and regulatory issues related to the acquisition of the freight easement, common carrier responsibilities and the establishment of freight operations before the Surface Transportation Board (STB). Kevin Sheys is a Partner with Hogan-Lovells and has considerable expertise and experience in working with the all the Federal agencies overseeing railroads and freight operators.

The District anticipates the continued need for Hogan-Lovells, LLP expertise and specialized knowledge for supplemental legal support on an as-needed basis. The initial contract was for a not to exceed amount of \$100,000 and goes through June 30, 2021. This Contract Amendment No. #1 provides for an additional 12-month term extension through June 30, 2022 for an additional amount not to exceed \$350,000.

FISCAL IMPACT: This is funded through the State Freight grant received, Fund 40 and is available in both the FY 21 budget and the proposed FY 22 budget.

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

Very truly yours,

/s/

Ken Hendricks
Procurement Coordinator

Attachment(s): Hogan Lovell's LLP Contract Amendment No. 1

**FIRST AMENDMENT TO THE AGREEMENT FOR CONSULTANT SERVICES
BETWEEN THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
AND HOGAN LOVELLS LLP**

This First Amendment dated as of June 2, 2021 (the “First Amendment”), to the Agreement for Consultant Services by and between Hogan Lovells LLP (hereinafter referred to as “CONSULTANT”) and the Sonoma-Marin Area Rail Transit District (hereinafter referred to as “SMART”), dated as of August 29, 2019 (the “Original Agreement,” as amended and supplemented by this First Amendment, the “Agreement”).

RECITALS

WHEREAS, CONSULTANT and SMART previously entered the Original Agreement on August 29, 2019 to provide legal services regarding rail transit issues, including Right-of-way acquisition, railroad regulatory issues, transportation, federal, state and governmental agencies matters related to the acquisition of the freight easement, common carrier responsibilities and the establishment of freight operations before the Surface Transportation Board (STB) and other federal agencies; and

WHEREAS, SMART desires to amend the Agreement to extend the term to June 30, 2022.

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

AGREEMENT

1. **“ARTICLE 4. PAYMENT”** Article 4 of the Agreement is amended as follows:

In addition to the not-to-exceed amount set forth in the Original Agreement and subsequent Amendments, the contract amount shall be increased by an amount not-to-exceed \$350,000.

2. **“ARTICLE 5. TERM OF AGREEMENT”** is hereby deleted and replaced in its entirety with the following:

“ARTICLE 5. TERM OF AGREEMENT.

Section 5.01 The term of this Agreement shall remain in effect through June 30 2022, unless terminated earlier in accordance with the provisions of **Article 6.**”

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.

THIS SPACE INTENTIONALLY LEFT BLANK

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

**SONOMA-MARIN AREA RAIL TRANSIT
DISTRICT**

Dated: _____

By _____
Farhad Mansourian, General Manager

HOGAN LOVELLS LLP

Dated: _____

By _____

Its _____

APPROVED AS TO FORM:

Dated: _____

By _____
District Counsel



June 2, 2021

David Rabbitt, Chair
Sonoma County Board of Supervisors

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

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
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Kate Colin
Transportation Authority of Marin

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SUBJECT: Disclosure Training and Disclosure Policy Adoption

Dear Board Members:

RECOMMENDATIONS: Adopt Resolution 2021-16 which acknowledges the Board Training and SMART's Continuing Disclosure Policy

SUMMARY:

Governments issuing bonds have an obligation to meet specific continuing disclosure standards set forth in continuing disclosure agreements. The agreements are entered into at the time of bond issuance to enable their underwriters to comply with SEC Rule 15c2-12. The SEC's Municipal Continuing Disclosure Cooperation initiative in 2014, along with other recent federal regulatory actions, have highlighted the importance of maintaining reliably system to adequately manage continuing disclosure. Failure to comply with these agreements, may impair access to the capital markets.

Continuing disclosures are intended to assist investors in determining the suitability of a bond, as well as potential risks associated with the credit SMART. By looking at continuing disclosures, investors can compare annual financial information about a particular bond from year to year.

Some disclosures provide for updated information such as the annual audited financial statements. Other continuing disclosures provide notification of specific events that may influence repayment of bonds such as, principal and interest payment delinquencies, bond calls, rating changes, etc.

Rudy Salo, from Nixon Peabody, is SMART's Bond and Disclosure counsel. He will be providing a short training for the Board on the purpose of continuing disclosure and the Board's responsibilities pertaining to continuing disclosure.

In addition, procedures have been developed that will be incorporated in SMART's Administrative Procedures.

Very truly yours,

/s/

Heather McKillop
Chief Financial Officer

Attachment(s): 1) Resolution No. 2021-16
 2) Disclosure Policy
 3) Disclosure Training PowerPoint

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT (SMART), STATE OF CALIFORNIA, ADOPTING A CONTINUING DISCLOSURE POLICY

WHEREAS, SEC Rule 15c2-12, as amended (the Rule) of the U.S. Securities and Exchange Commission requires that broker-dealers, when underwriting certain types of municipal securities, ensure that SMART enters into an agreement to provide certain information to the Municipal Securities Rulemaking Board “(MSRB)” about the securities on an ongoing basis; and

WHEREAS, SMART has 2020A bonds outstanding and , in connection with their issuance, executed a continuing disclosure agreement in compliance with the Rule (the “CDA”); and

WHEREAS, continuing disclosure is intended to assist investors in determining the suitability of a bond as well as potential risks associated with the credit of SMART District; and

WHEREAS, the CDA requires that certain financial information be submitted to the MSRB on an annual basis and the disclosure of certain events must be submitted timely but no later than 10 business days after the occurrence of an event; and

WHEREAS, the SMART Board of Directors has received the appropriate training related to their role in connection with SMART’s disclosure obligation; and

NOW, THEREFORE, BE IT RESOLVED that SMART’s Continuing Disclosure Policy attached hereto is hereby approved.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 2nd day of June, 2021, 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

Sonoma-Marin Area Rail Transit District Continuing Disclosure Policy

Purpose:

This Disclosure Policy establishes a framework for compliance by the Sonoma-Marin Area Rail Transit ("SMART") with its disclosure and/or contractual obligations with respect to Securities pursuant to the requirements of the Securities Exchange Act of 1934, as amended, including, in particular, Rule 15c2-12, as amended, and the Securities Act of 1933, as amended, and other applicable rules, regulations, and orders.

The purposes of this Disclosure Policy are to:

- Comply with Law and Contract – Facilitate compliance with applicable law and existing contracts when preparing and distributing Offering Documents in connection with Securities offerings and Continuing Disclosure Documents and making other Public Statements,
- Reduce Liability – Reduce exposure of SMART, SMART Board members, its officials, and employees to liability for damages and enforcement actions based on material misstatements and omissions in Disclosure Documents, and
- Reduce Borrowing Costs – Reduce borrowing costs by promoting good investor relations and providing transparency to the municipal markets.

Policy:

It is the policy of SMART to comply fully with applicable Securities law regarding disclosure in connection with the issuance of Securities and with the terms of its Continuing Disclosure Documents. Capitalized terms used but not defined in this Disclosure Policy have the meanings provided in the Disclosure Procedure.

Responsibilities:

Chief Financial Officer will designate a Disclosure Working Group to develop Offering Documents for primary offerings and other Disclosure Documents.

General Counsel will actively participate and advise the Disclosure Working Group, and review the Offering Documents and other Disclosure Documents.

SMART Board of Directors shall review and approve substantially final draft financing document packages provided by the Disclosure Working Group with respect to the issuance of Securities.

Resources:

- Securities Exchange Act of 1934, including Rule 15c2-12 – 15 U.S.C. § 78a et seq.
- Securities Act of 1933 – 15 U.S.C § 77a et seq.

WHAT ARE THE RESPONSIBILITIES OF THE BOARD OF DIRECTORS FOR SMART BOND DISCLOSURES?

JUNE 3, 2021

DISCLOSURE TRAINING



WHY DID CONGRESS ADOPT FEDERAL SECURITIES LAWS?

- *It is helpful to know why Congress adopted the federal securities laws and created the United States Securities and Exchange Commission:*
 - Securities presented quite the conundrum to Congress in the early 1930's:
 - They were not like goods or services because they were just investments and thus the quality of the security couldn't be objectively evaluated from a legal perspective; BUT
 - The one thing an investor needs is accurate, complete and timely information about the security to make a good investment decision.
 - Congress adopted the federal securities laws to recognize that the purchase and sale of a security is a different economic transaction than others and thus required laws to ensure that investors receive the information they need to make good investment decisions.
 - In many regards, the **Securities Exchange Commission's** entire mission is to ensure that these laws are enforced but also that investors of securities receive the kind of information they need to make informed investment decisions.



WHO IS THE SEC AND WHY IS IT SO CONCERNED ABOUT OUR MARKET?

- **The Securities Exchange Commission, which was created by the securities laws, enforces the Federal antifraud laws, which require issuers to be reasonable in providing investors a complete and accurate description of what issuers are offering investors to buy.**
- **The SEC has substantially increased its efforts to enforce these laws in the municipal securities market because it believes that the market suffers from a number of problems.**
- **These problems include:**
 - ***“Silo” Effect:*** SEC is concerned when departments within an issuer do not effectively communicate with each other to ensure that their disclosure documents tell an accurate and complete story to investors.
 - ***Lack of systematic process:*** SEC believes that too many issuers in the market do not have a careful process to ensure that their disclosure documents are accurate and complete, or fail to train relevant employees.
 - ***Inappropriate impact of political influence:*** Several of the SEC actions involve direct or indirect influence of political considerations that had the effect of distorting the content of disclosure provided to investors.

WHAT ARE ISSUERS OBLIGATIONS UNDER THE FEDERAL SECURITIES LAWS?

➤ ***The only Federal securities laws to which municipal entities are subject are the Federal antifraud laws.***

❑ Unlike corporate issuers, the SEC cannot tell municipalities what to put in its disclosure or require them to obtain the SEC's approval.

➤ ***The Federal antifraud laws require that:***

❑ Municipalities use reasonable care to ensure.....

❑ That all of the information municipalities prepare in connection with its bond offerings.....

✓ Is “materially” accurate....and

✓ Does not omit a “material” fact that makes that information misleading.



WHAT ARE ISSUER'S OBLIGATIONS UNDER THE FEDERAL SECURITIES LAWS?

The Two Applicable Federal Securities Law Provisions

— **Rule 10b-5**

- The responsibility must be “scienter” which requires a finding of knowledge or recklessness.
- Individual bondholders may bring a Rule 10b-5 claim if they have suffered damages

— **Section 17(a)(2)**

- The responsibility can be merely negligence.
- Only the SEC can bring an action for a Section 17(a)(2) violation
- Must be a finding that the statement was made to obtain money or property.

WHAT ARE ISSUER'S OBLIGATIONS UNDER THE FEDERAL SECURITIES LAWS?

How does securities fraud differ from other kinds of fraud?

— ***Not just misstatements but also omissions***

- Evaluates the totality of the statements and considers not just whether it is accurate but also if it is misleading.

— ***Does not need to be intentional – even negligence can violate the Federal antifraud laws.***

- The SEC can bring an action under the Federal antifraud laws if the issuer acts with negligence and the disclosure contains a material inaccuracy or material omission of fact that is misleading.

WHAT ARE ISSUER'S OBLIGATIONS UNDER THE FEDERAL SECURITIES LAWS?

What is material?

- Any fact a reasonable investor would consider to be important in making an investment decision.
- Objective standard.
- Does not matter if the information is confidential.
- Forward-looking trends can be material—not just historical information.
- Can look very different in retrospect than at the time!

WHAT THE SEC IS DOING AND WHY IT IS SO CONCERNED

— *Extraordinary Enforcement Activity*

- City of San Diego
- State of New Jersey
- State of Illinois
- State of Kansas
- City of Harrisburg
- City of Allen Park
- Wenatchee
- Port Authority
- City of Miami
- Among others....

OK: SO WHAT DO ISSUERS NEED TO DO?

- Tell the credit story when issuing new bonds and make sure that any “elephant in the room” is disclosed in initial disclosure documents
- Adopt good disclosure policies and procedures
- Staying on top of secondary market disclosure: Disclosure after – sometimes years after – the bond issuance as required under Rule 15c2-12, which requires underwriters to execute a contract with issuers and borrowers of municipal securities to provide updates to investors concerning their financial and operating condition

WHAT ARE ISSUERS REQUIRED TO DO TO COMPLY WITH THE FEDERAL SECURITIES LAWS WHEN ISSUING BONDS?

- **Tell the credit story**

- **Why?** Almost all SEC actions against municipal issuers are the result of the municipal issuer failing to communicate to investors a major trend, development or risk that investors should know when making an investment decision.
- **What is the credit story?** It means telling the “big picture” of what matters to investors, from the investor’s perspective. When an issuer prepares an offering document or an annual report, the issuer needs to be sure that it **both** provides investors all of the information they need to make a good investment decision **and** provides that information in a way that investors can understand.
 - It means making sure all appropriate employees are involved to ensure the whole story is told;
 - It means telling the bad news along with the good news; and
 - It means thinking about the information in disclosure documents from an investor’s perspective and not from the perspective of someone inside the issuer.
- **“Elephants in the room.”** Often times, telling the credit story comes down to making sure that the major developments or problems facing an issuer or the repayment source of the Bonds are effectively communicated to investors.

WHAT ARE ISSUERS REQUIRED TO DO TO COMPLY WITH THE FEDERAL SECURITIES LAWS WHEN ISSUING BONDS?

- **Develop sound policies and procedures**

- **Connect silos:**

- Municipalities naturally have several departments that operate independently from each other and this can present challenges to preparing effective disclosure.
 - Policies and procedures should ensure that these “silos” are properly connected.

- **Develop a working group:** Policies and procedures should include a working group that will be responsible for the issuer’s disclosure process and meaningfully review and discuss its disclosure.

- **Documentation:** Policies and procedures should require that the issuer document its compliance.

- **Training:** Policies and procedures should ensure that the individuals involved in the disclosure process understand the issuer’s responsibilities and their own responsibilities under the federal securities laws.

WHY DID THE SEC CREATE CONTINUING DISCLOSURE REQUIREMENTS PURSUANT TO RULE 15C2-12?

- The federal securities law requirements for corporate securities are much more extensive than for municipal securities—and knowing that is really important to understand why the SEC is so serious about continuing disclosure.
- Public companies are required to file extensive registration statements that the SEC reviews and must approve before offering securities to the market and are also required to file annual, quarterly and material event filings.
- The only federal securities laws that apply directly to issuers and borrowers of municipal securities are the federal antifraud laws—which, very generally, only requires them use reasonable efforts to ensure their disclosures are accurate and complete.
- Before the SEC amended Rule 15c2-12 in 1994, issuers and borrowers of municipal securities had no obligation to provide updates to investors concerning their financial and operating condition.

WHY HAS THE SEC FOCUSED EVEN MORE ON CONTINUING DISCLOSURE IN THE LAST 10 YEARS?

▪ **MCDC....**

- What happened?
- Why was it so big?
 - It was the long-awaited nuclear bomb in our industry....
 - Demonstrated the SEC's persistence and seriousness...
 - Demonstrated the SEC's willingness to be creative....
- What is the aftermath?
 - Well-staffed and well-funded unit at the SEC focused just on our market....
 - Commissioner focus on the market...
 - Close monitoring of our market.

WHY HAS THE SEC FOCUSED EVEN MORE ON CONTINUING DISCLOSURE IN THE LAST 10 YEARS?

- ***What is the result of all of these developments?***
 - Well-staffed, well-funded unit at the SEC...
 - An SEC that still believes that the municipal securities market isn't sufficiently updating investors on financial and operating data....
 - Investors continuing to complain about failures of continuing disclosure...
 - An SEC that remains frustrated that corporate-styled periodic reporting requirements do not apply to issuers in the municipal securities market...
 - SEC is determined to fix as many of these kinds of problems in our market.

WHAT DO OUR CONTINUING DISCLOSURE UNDERTAKINGS REQUIRE US TO DO?

- ***What most issuers and borrowers know:***
 - File annually:
 - Audited financial statements; and
 - Audited financial report that updates financial and operating data presented in the final official statement for the municipal securities; and
 - File within 10 business days' notice of the occurrence of 16 events (or for transactions completed before February 27, 2019, 14 events).
- ***This requires:***
 - Systems to meet calendar deadlines for annual filings;
 - Procedures to ensure everything is included in annual financial reports; and
 - Procedures to track potential listed events.

WHAT DO OUR CONTINUING DISCLOSURE UNDERTAKINGS REQUIRE US TO DO?

- ***What many issuers and borrowers do not know:***
 - ***All continuing disclosure filings also are “statements” tested under the federal antifraud laws!***
 - Issuers and borrowers should also take reasonable steps to ensure that the information contained in any continuing disclosure filing satisfies the federal antifraud laws....
 - Which means:
 - The issuer or borrower needs to take reasonable steps to ensure that the information in the filing...
 - Does not make a material misstatement...and
 - Does not omit a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

WHAT DO OUR CONTINUING DISCLOSURE UNDERTAKINGS REQUIRE US TO DO?

- ***This requires:***
 - Good process to make sure everything that the issuer or borrower states in a filing is accurate; and
 - Good process to ensure that the filing does not omit important information which entails:
 - Knowing the “circumstances” of the filing.
 - Good “internal due diligence” to make sure that all individuals who have key information are appropriately involved in the filing to ensure that the filing does not omit a material fact that would render the filing misleading.

WHAT DO GOOD CONTINUING DISCLOSURE PRACTICES LOOK LIKE?

- ***Written policies and procedures that address:***
 - Good calendaring;
 - Clear identification of a coordinator;
 - Clear identification and assignment of responsibilities to the right people;
 - Clear procedures to ensure the right people meet together at the right times and ask the right questions;
 - Good compliance check to ensure the filing includes all required information; and
 - Good listed event procedures.

WHAT DOES SMART STAFF DO TO COMPLY WITH THESE REQUIREMENTS?

- ***Based on SEC guidance, here are the main actions that SMART staff is focused on:***
 - *Maintaining and complying with Disclosure Policies and Procedures*
 - The Board is adopting disclosure policies and procedures at this Board Meeting
 - SMART's policies and procedures:
 - Identify all relevant subject matter experts and ensure they are appropriately involved;
 - Create a Disclosure Working Group, which is responsible for the disclosure process as well as reviewing and meeting together to discuss SMART's ongoing disclosure obligations under Rule 15c2-12;
 - Establish a Disclosure Officer, who is responsible to ensure and document that SMART complies with the policies and procedures.

WHAT ARE THE DIRECTORS RESPONSIBLE TO DO?

☐ ***Make a reasonable delegation in connection with future bond issues***

- It is important for the Board to be aware of the steps that SMART staff will be taking in connection with any future public bond issuances to ensure accurate and complete disclosure.

☐ ***You yourselves are part of SMART's disclosure policies and procedures:***

- SMART needs to make sure that your unique knowledge and perspective of significant facts and developments of SMART are included into SMART's disclosure.
- Directors should do an “elephant in the room” analysis to ensure that they are not aware of major trends or developments that may not be appropriately disclosed.
- Directors should feel free to discuss with SMART staff key developments at SMART – especially ones SMART staff may be unaware of – so that SMART staff can fold that information and perspective into both its disclosure at the time of future offerings but also to ongoing investor disclosures outside of any future offerings that are becoming increasingly important.

APPENDIX A: 15C2-12 EVENTS

- (i) principal and interest payment delinquencies;
- (ii) non-payment related defaults, if material;
- (iii) unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) substitution of credit or liquidity providers, or their failure to perform;
- (vi) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
- (vii) modifications to rights of security holders, if material;
- (viii) bond calls, if material, and tender offers;
- (ix) defeasances;
- (x) release, substitution, or sale of property securing repayment of the security, if material;
- (xi) rating changes;
- (xii) bankruptcy, insolvency, receivership, or similar event of the Issuer or another obligated person;
- (xiii) the consummation of a merger, consolidation, or acquisition involving the Issuer or another obligated person or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (xiv) appointment of a successor or additional trustee or the change of name of a trustee, if material;
- (xv) incurrence of a Financial Obligation of the District, if material, or agreement to covenants, events of default, remedies, priority rights or other similar terms of a Financial Obligation of the District, any of which affect security holders, if material; and
- (xvi) default, event of acceleration, termination event, modification of terms or other similar events under a Financial Obligation of the District, if any such event reflects financial difficulties.





June 2, 2021

David Rabbitt, Chair
Sonoma County Board of Supervisors

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

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Damon Connolly
Marin County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Susan Gorin
Sonoma County Board of Supervisors

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
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Farhad Mansourian
General Manager

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

SUBJECT: Listening Forum Action Summaries - Discussion

Dear Board Members:

RECOMMENDATION:

Public discussion and provide direction to staff for additional implementation

SUMMARY:

Beginning in September of 2020, Your Board launched a series of Listening Forums in Marin and Sonoma counties to bring community members together to exchange ideas on how to best position SMART for better future. The Listening Forums enabled a dialogue where the SMART Board heard from all sectors of the broader North Bay community. Participants shared their ideas and comments on several key aspects of SMART features & services. Listening Forum meetings were held for the following communities and areas of interest:

- Santa Rosa
- Windsor
- Cloverdale
- Healdsburg
- Novato
- Larkspur
- San Rafael
- Bicycle and Pedestrian Pathway connecting our stations
- The League of Women Voters

Public participation in these conversations has helped advise the Board on many strategic decisions, especially as the agency has started to emerge from the COVID-19 crisis. After careful consideration and planning, significant progress has been made to meet the needs of our community.

Topic	Key Discussion Takeaways	Action Taken
Schedules	Participants requested more service during commute hours, later trains in the evening, and the return of weekend service to accommodate leisure trips.	On May 24, 2021, SMART added 5 trips to the weekday schedule, including an evening train, and reintroduced Saturday weekend service with an expanded schedule to meet new ridership demand as COVID-19 restrictions begin to ease.
Fares	Many attendees informed the Board that the cost of fares was too high and prevented them from taking the train. They suggested lower fares and more discounts during the commute times and for families travelling together.	On May 24, 2021, SMART introduced a promotional fare structure that reduced costs by over 40%. The cost of a 31-Day Pass will be reduced to \$135 on September 1. Beginning on June 5, passengers can enjoy unlimited rides on the weekend for a flat rate fare of \$10 for adult riders and \$5 for discount riders. Promotional fares are currently available on SMART e-Tickets.
Bicycle and Pedestrian Pathway Connecting our stations	Public comments requested that SMART commit funds to constructing the bicycle and pedestrian pathway, with a focus on connecting segments in high-traffic areas.	At the SMART Board of Directors Meeting on April 21, 2021, SMART approved the Capital Projects Plan that advances all remaining pathway projects to shovel-ready status, including producing needed environmental review documents, completing design documents, and securing necessary construction permits. This \$10.8M investment will leverage grants totaling \$38.1M.
Rail Extensions and Future Stations	Discussions in Northern Sonoma County cities centered on SMART's commitment to finishing the rail line all the way to Healdsburg, as well as exploring the connection to Vallejo. The second station in Petaluma was also requested to be made a priority by SMART.	On April 21, 2021, SMART's approved Capital Projects Plan which included committing funding to key components for Northern Extensions, which includes a bridge in Healdsburg over the Russian River. The Plan also commits funding to be leveraged for the construction of the Petaluma Station at Corona Road.
Communications and Marketing	The public requested more dedication to education campaigns to inform the public on how to ride SMART as well as a focus on the tourism sectors in both counties.	On May 24, 2021, SMART Board approved a contract with Civic Edge Consulting to create greater awareness surrounding the service SMART offers to the public and how the community can benefit from SMART. The Welcome Back Campaign is designed to increase

		<p>engagement and ridership as it unfolds over the summer months.</p> <p>At the May 24, 2021 Board meeting, we also introduced 10 step Welcome Back to SMART efforts:</p> <ol style="list-style-type: none"> 1. Increase Weekday Train Trips 2. Resume Saturday Train Service 3. Introduce Promotional Reduced Fares 4. COVID Preventative Measures 5. Require Masks – Following TSA Guidelines 6. Contactless Payment 7. Healthy Workforce 8. Safety Signage 9. Community Outreach 10. Customer Service <p>We had significant coverage by media of our schedule and fare changes and will be doing additional media over the next several weeks.</p> <p>We have recently partnered with the San Rafael Chamber. We will be using their relationships and expertise to increase awareness of SMART and what we offer to the community and businesses. They will be assisting us with the following:</p> <ul style="list-style-type: none"> • Creations of materials that tell the story of SMART and its impact on Marin’s employers, employees, residents, and visitors • Communication strategy the ensure maximum exposure to SMART • Hosting focus groups • Assistance in attending local events • Increase awareness of SMART’s services with the community and businesses <p>We are hoping to establish a similar partnership with a Chamber(s) in Sonoma County and will be working towards that goal over the next several months.</p>
Citizens Oversight	The public requested clarification on the role of the	On May 27, 2020, COC discussed the future of their Committee. On September 2, 2020 SMART

Committee (COC)	COC and their participation in decisions moving forward, with the idea of restructuring the Committee also being considered.	<p>Board held hearing and received additional public comment and directed staff to meet with COC and seek their input. On October 15, 2020 COC discussed this matter and insisted that their role and scope of responsibility not be changed and recommended a new Citizens Advisory Committee be created that could assume any new activities and responsibilities that the Board wishes for them to have.</p> <p>On March 17, 2021, As part of Listening Tour discussion, more COC discussion was held.</p> <p>Recommend this item be agendaized in fall/winter 2021 time frame so the New General Manager can start and complete this matter.</p>
First Mile/Last Mile Connections	Participants encouraged SMART to explore more options to create connections to and from the train stations, to make accessing destinations and other transit systems more convenient.	SMART is partnering with the transportation authorities in Marin and Sonoma to build a system of 300 shared electric bikes near SMART stations to increase access to other transit and destinations. The project is on schedule to launch in late 2021/early 2022.

Very truly yours,

/s/
Farhad Mansourian
General Manager