



**BOARD OF DIRECTORS
REGULAR MEETING AGENDA
November 6, 2019 – 1:30 PM**
5401 Old Redwood Highway, 1st Floor
Petaluma, CA 94954

1. Call to Order
2. Approval of the October 16, 2019 Board Minutes
3. Public Comment on Non-Agenda Items
4. Board Member Announcements
5. General Manager's Report
6. Consent
 - a. Authorize the General Manager to execute Contract Amendment No. 3 with eLock Technologies, Inc. in an amount of \$47,490 to purchase two electronic bicycle quad lockers (8 spaces) for the Novato Downtown Station
 - b. Approve a Resolution Amending the Fiscal Year 2019-20 Budget and Revise Table 5 to Authorize the addition of 0.5 Full Time Equivalent (FTE) Code Compliance Officer
 - c. Approve a Resolution No. 2019-19 for Appropriation of Funds Related to Recent Power Shutoff Emergency
7. Approval to Allow for Free Rides on SMART for Military Veterans and Active Duty Military for Veterans Day Weekend (November 9, 10 and 11, 2019)
8. Approve a Resolution Implementing Cost-of-Living Increase for Unrepresented Employees
9. Conduct Second Reading of Ordinance No. 2019-01 as amended on October 16, 2019; Approve Ordinance No. 2019-01 Extending the Sonoma-Marin Area Rail Transit District's One-Quarter of One Cent (1/4-cent) Retail Transaction and Use Tax

10. Adopt a Resolution calling and providing for a special election and requesting the consolidation of such special election with the statewide election to be held on March 3, 2020 seeking authorization to extend the existing one-quarter of one cent retail transactions and use tax and requesting the Sonoma and Marin Counties Board of Supervisors to consolidate and place the measure on the March 3, 2020 statewide election; and Direct the Clerk of the SMART Board to provide a certified copy of Ordinance No. 2019-01, Expenditure Plan and the 75-word ballot summary to be submitted to the Sonoma and Marin Counties Registrar of Voters no later than December 6, 2019.
11. Approve a Resolution Authorizing the Award of Contract No. CV-DB-18-001 to Stacy and Witbeck, Inc. for the Construction of the Windsor Extension Project for an amount of \$47,725,888
12. Next Regular Meeting Board of Directors, November 20, 2019 – 1:30 PM – 5401 Old Redwood Highway, 1st Floor, Petaluma, CA 94954
13. Adjournment

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**BOARD OF DIRECTORS
REGULAR MEETING MINUTES**

October 16, 2019 - 1:30 PM

5401 Old Redwood Highway, 1st Floor
Petaluma, CA 94954

1. Call to Order

Chairman Pro Tem Lucan called the meeting to order at 1:30pm. Directors Arnold, Connolly, Fudge, Garbarino, Hillmer, Naujokas, Rabbitt, Rogers and Zane were present. Directors Pahre and Phillips absent.

2. Approval of the September 18, 2019 Board Minutes

Duane Bellinger said that he would like his comment to be corrected to reflect the following: In the event that SMART is short of \$150M to get to Healdsburg, that is the only place he would not object for a park-n-ride.

MOTION: Director Hillmer moved approval of the September 18, 2019 Board Minutes as corrected. Director Arnold second. The motion carried 10-0 (Directors Pahre and Phillips absent).

3. Public Comment

Sheila Baker stated that the train has changed her quality of life. She loves her bicycling and train ride connections. She is a proud member of the Sonoma County Bicycle Coalition. She disagrees slightly with the bicycle community which have stated that they are concerned with SMART not completing the Pathway, she feels that the train stands on its own, which is the most exciting service that has happened in the Bay Area. She wants the pathway to be build, but most of all she would love the Sales Tax Extension Measure to pass.

Richard Harkness said that the Board should not place the Sales Tax Extension on the ballot for three reasons: 1) SMART has not provide the information that voters need to make an informed decision; 2) What we do know about SMART's performance so far is not good; and 3) There are better ways to spend \$500 million of taxpayers' money. He provided written statement to the Clerk of the Board (On File with Clerk).

James Duncan said that the California Public Utility Commission unanimously has granted a two-year extension of the approved 2016 Jennings Avenue Pedestrian and Bicycle at grade rail crossing. He suggested that everyone read the recent Judge opinion. SMART staff has opposed the City of Santa Rosa recent extension request. The Commission conclusively has rejected them all, regardless of what SMART staff has said. The Commission's Safety Enforcement Division agrees that the City of Santa Rosa Jennings Avenue safety crossing design meets the Commission safety requirements. The Commission expects SMART's staff to comply with 2016 approval and cooperates with the City of Santa Rosa. Also, the Commission and the State Courts have the authority to enforce the Commission's decision. The City of Santa Rosa and members of the public will stand to initiate enforcement action, unless SMART's Board promptly directs SMART's staff to comply. Since, the Commission has approved an extension he urged the Board to build the Jennings Avenue crossing without further delay.

Jack Swearingen stated that Friends of SMART strongly supports the SMART project and the sales tax extension.

Felix Huerta Jr. (SMART's Engineers-Conductor Local Union Representative) stated that there are approximately 5 items pending negotiations with the bargaining team. The items are: 1) there are no part-time employees at this time, and employees need to be hired to work full-time; 2) "Deadheading", in the last year only one employee has deadheading, he has suggested changing the language on the document to time expended; 3) solution to salary wages; 4) Bay Area Index for cost of living shall be used and 5) the bargaining team needs to negotiate the Larkspur Extension.

Bruce Logan read a letter from Michael Arnold called "misleading ballot measure language". The letter comments are based on the ballot language that is included in the Ordinance and included in the Board packet. He said that there is language in the Ordinance Section 19 is highly misleading, promotional and inconsistent with current law and suggested the language to be corrected (On File with Clerk).

4. Board Members Announcements

None.

5. General Manager's Report

General Manager Mansourian stated that SMART has carried 1,528,949 passengers, 148,00 bicycles, and over 5,600 wheelchairs.

Mr. Mansourian stated that the Federal Railroad Administration, Administrator from Washington DC visited our facility and took a train ride last week. Mr. Mansourian read the following message from Mr. Batory, FRA Administrator, "Thank you for hosting a most impressive tour of "SMART" earlier this week for myself and staff. Listening to various presentations of mutual interests in conjunction with meeting with your senior leadership

solidified my respect for the overall operation. The condition of property and equipment speaks testaments about the family of railroaders that maintain and operate the "SMART" commuter network daily. On behalf of the Federal Railroad Administration please feel free to share with your employees, that their daily efforts focused on safe operations are naturally paramount and it was a sincere pleasure to experience the results of those efforts during the visit. In essence job well done to all and keep up the good work". Mr. Mansourian thanked SMART staff, Board members and the public for their support.

Mr. Mansourian stated that there is a program called "FASTER". The group is comprised of staff from Bay Area Council, the Silicon Valley Manufacturing Group, and SPUR, have established a technical advisory group comprised of each County Transportation Agency, each of the Bay Area's transit operators, and regional bodies such as the Metropolitan Transportation Commission, to provide feedback on the FASTER Bay Area proposed voter initiative in support of significant regional transit investments. SMART plans to submit funding request for the following projects: 1) rail completion from Windsor to Cloverdale, Petaluma 2nd Station; 2) pathway completion from Windsor to Cloverdale; 3) completion of pathway gaps closures in Sonoma and Marin Counties; 4) completion of the connection between the National Railroad and SMART (Novato Station to Suisun City); and 5) double tracking and improve efficiency. Mr. Mansourian will continue to bring information to the Board once available.

Mr. Mansourian stated that SMART has received approval of Positive Train Control system 1from Downtown San Rafael to Larkspur Station. He gave an overview presentation of the Larkspur Extension project. Highlights included:

- Larkspur Extension Project Update
 - SMART has completed 99% of tests
 - Remaining test are focused on 4th, 5th and Mission crossing
 - Testing is scheduled for Saturday, October 19 2019 between 6pm and 11pm; in order to accommodate these tests without operating overnight, SMART will be cancelling Southbound (7:23pm) and Northbound (8:50pm) trains that day
 - Intensive Outreach will be conducted
- Larkspur Extension Simulated Service
 - Full functioning of the system at full operation frequency from Airport to Larkspur
 - Simulation service will take place during normal hours
 - Southbound trains will drop passengers at San Rafael and continue to the Larkspur Station without passengers
 - Northbound trains will stop at San Rafael Station to pick up passengers
 - SMART is currently developing the schedule and timeframe for simulated service and will provide updates as the details are finalized

Comments

Director Arnold asked General Manger Mansourian if he knew that Golden Gate Bridge submitted a request for funds for the SMART to Ferry connection under the FASTER program. Mr. Mansourian responded yes.

Director Rogers asked Mr. Mansourian if he and staff can provide an after action of the power shut off that affected the County.

Director Rabbitt thanked the General Manager Mansourian and staff for the ongoing work installing the quad-gates in Penngrove.

6. Consent
 - a. Approval of Monthly Financial Reports

Chairperson Pro Tem Lucan asked for Board and public comments on the proposed Consent Agenda.

MOTION: Director Hillmer moved approval of the Consent Agenda as presented. Director Fudge second. The motion carried 10-0 (Directors Pahre and Phillips absent).

7. Authorize the General Manager to Execute Contract Amendment No. 5 with Bridges Restoration, LLC (dba Serve Pro) in an amount of \$143,801 to provide hazardous material clean up as-needed

Operations Manager, Jennifer McGill, stated that the item for Board approval today is to authorize the General Manager to execute Contract Amendment No. 5 with Bridges Restoration, LLC (dba Serve Pro). They have been providing hazardous material clean up services to trains involved in incidents. This the recent number of incidents, SMART needs to increase the amount of the contract by \$142,801.

Staff recommends authorizing the General Manager to execute Contract Amendment No. 5 with Bridges Restoration., LLC.

MOTION: Director Arnold moved to Authorize the General Manager to Execute Contract Amendment No. 5 with Bridges Restoration, LLC (dba Serve Pro) in an amount of \$143,801 to provide hazardous material clean up as-needed as presented. Director Rogers second. The motion carried 10-0 (Directors Pahre and Phillips absent).

8. Authorize the General Manager to Execute Contract Amendment No. 6 with Portola Systems, Inc. in an amount of \$217,756 for Network Maintenance and Network Infrastructure for Larkspur and Downtown Novato Stations

Information Systems Specialist, Bryan Crowley, stated that the item for Board approval today is to authorize the General Manager to execute Contract Amendment No. 6 with Portola Systems Inc. for IT support services. This contract provides network infrastructure and support for existing SMART stations and in addition the two new stations opening soon.

Staff is recommending approval of Contract Amendment No. 6 in the amount of \$217,756.

MOTION: Director Naujokas moved to Authorize the General Manager to Execute Contract Amendment No. 6 with Portola Systems, Inc. in an amount of \$217,756 for Network Maintenance and Network Infrastructure for Larkspur and Downtown Novato Stations as presented. Director Rabbitt second. The motion carried 10-0 (Directors Pahre and Phillips absent).

9. Approve a Resolution Authorizing the General Manager to Submit State Transit Assistance Fund Claims to the Metropolitan Transportation Commission

Programming and Grant Manager, Joanne Parker, stated that the item for Board approval today is to authorize the General Manager to submit the annual State Transit Assistant (STA) claims to the Metropolitan Transportation Commission (MTC). SMART became eligible for these claims once SMART started passenger rail service.

The STA funds are divided into revenue funds, population funds and good repair funds.

Staff recommends that the Board adopts the resolution authorizing the General Manager to submit claims for State Transit Assistance funds.

MOTION: Director Rogers moved to Approve a Resolution Authorizing the General Manager to Submit State Transit Assistance Fund Claims to the Metropolitan Transportation Commission as presented. Director Rabbitt second. The motion carried 10-0 (Directors Pahre and Phillips absent).

10. Approve a Resolution and Authorize the Board Chair to Execute the Collective Bargaining Agreement Between the Sonoma-Marin Area Rail Transit District and the International Association of Machinist and Aerospace Workers for the period of October 7, 2019 – June 30, 2022

Human Resources Manager, Lisa Hansley, stated that the item for your Board for approval today is to authorize the second agreement with the International Association of Machinist and Aerospace Workers and SMART. The agreement represents the Vehicle Maintenance Technicians, Laborers, and Facilities Maintenance Technicians. The new agreement includes the following modifications: 1) wage increases including cost of living adjustments as well as equity adjustments; 2) probationary period of 9 months with the option for the District to extend the period by an additional 3 months, the current probationary period is 12 months; 3) shift bidding, which employees will bid shift every 6 months according to seniority, it currently allows once every 12 months.

MOTION: Director Zane moved to Approve a Resolution and Authorize the Board Chair to Execute the Collective Bargaining Agreement Between the Sonoma-Marin Area Rail Transit District and the International Association of Machinist and Aerospace Workers for the period of October 7, 2019 – June 30, 2022 as presented. Director Arnold second. The motion carried 10-0 (Directors Pahre and Phillips absent).

11. Approve a Resolution Authorizing Supplemental Appropriation for Safety and Security Expenditures

Operations Manager, Jennifer McGill, stated that the item for Board approval today is to approve Resolution No. 2019-15 in an amount of \$300,000 for safety and security expenditures related to emergency responses, outreach and incident prevention efforts.

SMART has experienced a busy 6 months and we are constantly learning and adjusting our practices and system to address the needs of our riders and the safety of the general public.

Funding for this supplemental appropriation is available from SMART reserves due to an additional \$300,000 from our successful contract negotiations with Sumitomo Corporation related to the delayed rail car delivery schedule.

Comments

Director Rogers asked if the amount will amend the budget to include the amount spent or is the amount for a specific need. Ms. McGill responded that it's for a specific need, SMART has spent the allocated amount that was budgeted and needs additional funds for safety measures.

Director Zane said that its very prudent to spend these additional funds given the recent incidents that have occurred. She thanked SMART's staff for going the extra mile and adding additional funds for safety measures. Any time there is an opportunity for Board members to assist in informing the public with safety messages is money well spent.

MOTION: Director Zane moved to Approve a Resolution Authorizing Supplemental Appropriation for Safety and Security Expenditures as presented. Director Fudge second. The motion carried 10-0 (Directors Pahre and Phillips absent).

12. Adopt the 2020 Expenditure Plan and Conduct a First Reading of Ordinance No. 2019-01

General Manager Mansourian stated that there are two items for Board approval today: 1) Adopt the 2020 Expenditure Plan; and 2) Conduct a First Reading of Ordinance No. 2019-01.

SMART's 2020 Expenditure Plan

In order for SMART to proceed with extension of our current sales tax (Measure Q) without increasing the current rate, we are required to prepare and approve an Expenditure Plan (Plan). In addition, the Board must adopt an Ordinance to extend the sales tax. Today, we recommend that you adopt the Expenditure Plan and hold the first reading of the required Ordinance.

At the September 18, 2019, Board meeting, your Board discussed the draft Plan and received public feedback, and was posted on SMART's website for additional comments.

The difference between the 2008 and 2020 Expenditure plan is that in the last decade SMART has changed from a planning agency to a major capital projects agency to an operating transit district and construction agency to complete the rail and pathway segment.

The 2020 Expenditure Plan also addresses the need for an extension of the tax without changing the current rate in order to refinance the current bond debt that was required to build the first 43 miles. Based on the projections and assumptions discussed as part of our 2019 Strategic Plan, we will be able to reduce our annual debt payment from \$18 million to \$6 million per year, with the difference in savings in the amount of \$12 million each year.

The Expenditure Plan is structured with four principles: 1) Provide for ongoing Operations and Maintenance of the current system; 2) Prioritize Safety and Security Maintenance and Improvements; 3) Provide for Capital Investments and 4) Future Amendments (provide the Board with flexibility).

Ordinance No. 2019-01: SMART ¼ of One Cent Retail Transaction and Use Tax Extension
This Ordinance provides the language needed for placing the sales tax extension on the ballots in Marin and Sonoma Counties. SMART will bring the final Ordinance for your approval at the November 6, 2019 Board meeting.

Comments

Director Zane said she is concerned that the Expenditure Plan does not cover the needs of the Bicycle Coalitions, and the cycling community was crucial in the passage of the original measure. Mr. Mansourian responded that in the 2008 Expenditure Plan funding projections were \$890 million, however only \$289 million were received. SMART has doubled the sales tax income by leveraging and has delivered \$600 million project. SMART has been very successful leveraging funds to continue to build more. Also, restructuring the debt will secure the current rail and pathway operations for the future. The 2008 Expenditure Plan does not have language regarding the pathway segments, however, in the 2020 Expenditure Plan segments have been listed. The Expenditure Plan has principles that gives the Board the flexibility to evaluate available funds on an annual basis. The 2019 Strategic Plan illustrates conservative funding projections. Director Zane said that there is a public perception that the SMART has not prioritized the pathway and needs the Bicycle Coalition support.

Director Naujokas stated that the previous Measure was a statement of anticipation and prediction, now we know the behavior we will see. The new Expenditure Plan has flexibility of how to address the needs of bicyclist. Mr. Mansourian responded that Expenditure Plan Principle #4 gives the Board the flexibility to make decisions especially during annual budget review/approval. Director Naujokas said that the Healdsburg and Cloverdale have received zero percent of the original intent and other jurisdictions have received 100 percent of the original intent. He asked what type of opportunities does the Expenditure Plan have to strengthen the message.

Director Connolly agreed with Director Zane comments regarding the cycling community was crucial in the passage of the original Measure in 2008, we anticipate that they will be there again. Also, the number of bicyclists that take their bikes on the train is higher than anticipated, and the Pathway allows people/passengers to walk and/or bike to get to SMART Station, work place and home. The Expenditure Plan Principles specifically address the segments of the pathway along SMART's right-of-way that need to be completed. The 2008 Expenditure Plan (Implementation Guidelines) states the when additional funds become available SMART will prioritize completion of the bicycle/pedestrian pathway, this language was very weak. In the 2020 Expenditure Plan, SMART is taking a stronger concrete position and he suggested including addition language in the Implementation Guidelines Section. Also, when pursuing the objectives concurrently, often time grants have rail and pathway components that can send a stronger message.

Director Rabbitt thanked SMART's staff for the work on this and all for the correspondence received. He understands that the last campaign/ballot measure it was promised and this time we don't want to set expectations or make promises that can't be delivered. He favors the General Manager's approach that at every annual budget cycle, the Board can make decisions as to how available funds could be spent. The approach can help build the pathway faster, rather than prioritizing a dollar amount at this time, that may not exist in the future. The pathway work that has been completed at this time is in segments for various reasons. SMART has been successful leveraging funds for rail and pathways. "Highway 101 freeway has taken a long time to construct and that is partly because they should have passed a ½-cent sales tax instead of the ¼-cent sales tax", he added. SMART does not want to repeat many decisions that were made during the recession and is making great progress. It is also vitally important to continue to leverage funds, and having an operating transit system. The multi-use pathway is not going to be 70 miles, due to certain segments going through incorporated cities, however we continue to make progress. It is going to be tough to complete the north segments and grant funds maybe harder to get to complete the project. Lastly, SMART has taken 1.5 million people off the Highway 101 corridor by providing alternative transportation.

Director Rogers stated that Measure Q was a specific tax and it is important to have the 2008 Expenditure Plan with it to tell the public how the tax dollars are going to be spent. He asked if the Windsor to Cloverdale extension along with pathway segments will be completed prior to going East as promised in the original. Mr. Mansourian responded that SMART needs grant funds to construct and complete the Windsor to Cloverdale extension which is a \$450 million project. However, if the State of California and Federal government says that in order for SMART to complete the Windsor to Cloverdale extensions and pathway you will also need to construct other projects. This does not mean that the project going north will not be completed, just means that there will be a relationship among agencies to complete the projects by leveraging funds. At this time, SMART does not have capital funds available to go East prior to going North. Director Rogers asked if General Manager Mansourian can clarify the \$40M vs \$70M sales tax revenue. Mr. Mansourian responded that he would like to conduct analysis and report at the November 6th Board meeting with the second reading of the Ordinance. Director

Rogers asked if there is a timeframe before it goes to the Ballot? District Counsel, Tom Lyons, responded that ordinance guidelines do not state what can be change from the first reading to the second reading for our District. If the changes are significant and the timing needs to start again, it will need to be determined by Board. Director Rogers would like the constituents who do not have train service in Sonoma County to believe in the promise.

Director Arnold suggested changing the Ordinance title to say Extension of SMART ¼ of one cent Retail Transaction Use Tax.

Director Fudge stated that the 2020 Expenditure Plan has very clear and transparent language, and it also lists SMART's priority projects. While on vacationing in China, she also tried to figure out how cities of 11 to 30 million people can have as much traffic as we do and be able to move around. She will be sharing pictures of separated bike lanes and thoughts on how to get bicyclist on city streets, pathways and to/from SMART Stations. She had the opportunity to ride the train which took 7 minutes to get to the Airport and a bus ride took 90 minutes. She stated that there has been misunderstanding with communications about SMART's priorities and what has been completed. The Bicycle Coalitions should understand that by SMART including the incomplete pathway segments in the 2020 Expenditure Plan outlines SMART's priorities. The most important thing that the public can do is to vote for the Sales Tax Extension in order for the entire rail and pathway project be completed.

Director Hillmer thanked Directors Zane, Naujokas, Connolly and Rabbitt and all who spoke from both counties in helping strengthening SMART's vision. As soon as passenger service started in Downtown San Rafael the trend in bicycle use was strong and was a huge surprise to all. Its very evident that the bicycle users are the ones who have solved the first and last mile solution on their own and SMART needs to build and continue to add improvements to continue; without their participation SMART is not fully performing. We need the creativity of having flexibility to complete the project.

Public Comment

Dani Sheen stated that each Board member needs to believe that SMART is going to complete the Windsor to Cloverdale extension and inform their constituents. Its outlined in the Expenditure Plan and supports approval of this item to move the project forward.

Bruce Logan stated that he has conducted research of SMART. The Citizens Oversight Committee, which has been the same members for 9 years, with no by-laws, terms and documents available from 2017 or meeting videos. He hopes to ride the train once the Larkspur Extension opens.

Bjorn Griepenburg thanked the Board members for the consideration of the letter sent today and requests that the letter and all correspondence received be added to the public record for today's meeting. He stated that the Bicycle Coalitions are not asking SMART to spend an amount of funds or percentage on the pathway, however many constituents

want and expect it. They are requesting that SMART's Board prioritize the bicycle/pedestrian pathway with reserve funds for three main reasons: 1) the sales tax extension will enable and grow the reserves significantly in the years; 2) bicycle/pedestrian funding is very competitive; and 3) the pathway is the only capital project that has been identified. Also, every day that the pathway is not built it leads bicyclist to go on dangerous road. He urged the Board to fulfill the pathway.

Steve Birdlebough stated that SMART has been doing a phenomenal job in leveraging funds through grants to construct the project. He said the public and bicycle coalitions need to understand the process. It would be helpful to be more transparent during the annual budget period.

Tarrell Kullaway said that she was told that the Marin County Bicycle Coalition campaigned hard for the measures that brought SMART into existence. Their members supported the vision. More than 400 people have written personal, individualized emails to Board members detailing how the missing links of the SMART pathway impact their quality of life. She said there is a single mom living in Hamilton and can't afford to ride the train and would like her family to be able to bike on a safe pathway. She urged the Board to consider including language in the Expenditure Plan (written statement on file with clerk).

Willard Richards stated that SMART and another lane on highway 101 will not fix congestion. He continues to supports SMART and it will provide incentives for businesses and jobs to established along the right-of way.

Patricia Tuttle Brown stated that she is very supportive of the General Manager Mansourian and the Board. The Pathway from Petaluma and Novato that was funded by Caltrain is shared by vehicles. She suggested building pathways that are not shared with vehicles.

Sheila Baker stated that the Cities and County need to work together to make the roads/streets safe in order for people to walk/ride to get to the SMART stations.

Anthony Chor said that services are not available from Marin Transit and Golden Gate Bridge to get to San Marin Station and Hamilton Station. He suggested improving public transportation access to both stations since its very essential and can provide more ridership.

Chairman Pro Tem Lucan stated that the General Manager will respond to a few of the Directors' questions.

Mr. Mansourian asked that the Board members and the public go to page 106 of 116 (entire Board packet). He said that the bicycle coalition letter outlines what needs to be completed, which is 6 miles in one county and 7 miles in another. We are now serving 80% of the population of what was intended to serve, once Windsor Extension opens it

will be 90%. In the Expenditure Plan – Implementation Guidelines he is recommending the following three items to be added: When seeking capital grants pursuing rail and pathway, SMART's objective is to concurrently build rail and pathway when feasible (new #6); During annual budget reviews, based on revenue status at that time, the Board of Directors will provide direction to staff for upcoming priorities; including; operation of existing system, safety and security, rail and pathway capital projects (new #7); and For cities that train service was planned and currently not provided (Windsor, Healdsburg and Cloverdale), following that passage of the March 2020 Sales Tax Extension, \$1 million dollars will be allocated for pilot programs, such as partnerships with public and private transportation providers to serve these SMART stations or provide for additional ridership incentives. These specific pilot programs are subject to SMART's Board of Directors approval (new #8).

Director Rogers asked for clarification of new #8, if the funding will be used to assist the communities that are not provided with passenger service to get to train station. Mr. Mansourian responded yes. Director Rogers said that residents of Cloverdale and Healdsburg will appreciate the SMART will be filling the gap which shows good promise. He said that he has not heard complaints about obtaining individual grants for rail or pathway. The concern that has been addressed pertains to Measure Q and Sales Tax and how those funds will be prioritized. Mr. Mansourian responded that he specifically used the language from the bicycle coalition letter.

Director Connolly stated that during the annual budget period the Board will have the opportunity to review the sales tax revenue. Some grant applications require having a local revenue match to qualify and the last thing that is needed is to battle for pathway funding.

Director Naujokas stated that he is very supportive of the new #8 - Implementation Guidelines.

Director Hillmer stated that the Larkspur community is very excited, and looking forward to riding the SMART train to Petaluma for “date nights”.

Director Rabbitt stated that he is supportive of the additional language, since it addresses the issues at hand. It would be politically incorrect to say that he hates receiving a letter on the day of the meeting, especially a letter that has substance. He spent hours responding to approximately 300 emails. He does not recommend that SMART spend any reserves funds. He suggested that SMART establishes a Debt Policy and Reserve Policy. The second largest city does not have the second station that was original proposed in Petaluma, which is also outlined in the Expenditure Plan. It would be helpful to have a meaningful dialogue to discuss “reserve policy” with the Board, he never saw this entity not having a priority of building the entire system. “It’s not easy, and the dollars are few and far between. Also, looking at what we’ve done in eight years’ time is a phenomenal accomplishment. Haters will hate, and they’re always out there. But we’re winning over converts right and left, and I know that because I hear from them often.

Director Zane agrees that SMART needs to establish a reserve policy. She said that SMART is very serious about the bicycle/pedestrian pathway and believes that ridership will increase once its completed. SMART has been very successful with grants.

Director Rogers asked for clarity if the \$40M annual sales tax revenue is incorrect, at what point in time will it be corrected. District Counsel Tom Lyons responded that the item can be addressed at the second reading at the November 6, 2019 meeting before approval. Chief Financial Officer, Erin McGrath stated that the Mr. Mike Arnold would prefer that SMART use an average of the 40-year stream of the measure, rather than the amount that is included, staff will review and analyze the numbers.

Director Garbarino said that she agrees with her colleagues and its phenomenal to see the collaboration while standing on your feet, especially the General Manager Mansourian writing the additional Implementation Guidelines. It's a beauty in the public process.

Chairman Pro Tem Lucan stated that two Motions will follow:

MOTION: Director Hillmer moved to Approve SMART's 2020 Expenditure Plan as presented. Director Garbarino second. The motion carried 10-0 (Directors Pahre and Phillips absent).

Chairman Pro Tem Lucan introduced the Sonoma-Marin Area Rail Transit District Ordinance Extending the Current One Quarter of One-Cent Retail Transaction and Use Tax and Waive Reading of Ordinance

MOTION: Director Hillmer moved to Introduce and Waive Reading of Sonoma-Marin Area Rail Transit District Ordinance Extending the Current One Quarter of One-Cent Retail Transaction and Use Tax as presented. Director Arnold second. The motion carried 10-0 (Directors Pahre and Phillips absent).

13. Consideration of a vote on the formation of the Santa Rosa Railroad Square Community Benefit District (CBD) at a public hearing on October 29, 2019

Director Roger removed himself in participating in this item at 3:35pm

Chief Financial Officer, Erin McGrath stated that the item before the Board is for a consideration of a vote on the formation of the Santa Rosa Railroad Square Community Benefit District (CBD) at a public hearing on October 29, 2019. This item was developed by the Railroad Square Association to create a Community Benefit District, which involves levy of the assessments on properties in certain area for certain improvements. A CBD is required to provide, "a particular and distinct benefit over and above general benefits conferred on real property located in the CBD. In this case, the Santa Rosa Railroad Square Benefit District would provide increased cleanliness, commerce, business attraction and retention, increased commercial property rental income and improved District identity.

SMART's initial annual assessment will be \$26,702.30 in the first year and is subject to an annual increase depending on the Owner's Association/District Management Corporation.

Therefore, staff bring this item before you today for policy decision to vote either for or against the formation of the CBD.

Comments

Director Naujokas asked if it's the entire property or just the Downtown Santa Rosa Station area. Ms. McGrath responded that it's the property that SMART has an agreement with the developer. If the property were sold the tax would fall on the owner of the property.

Director Rabbitt asked if the \$26,702.30 tax assessment for the development parcel only. Mr. Mansourian responded yes, that is SMART understanding. Director Rabbitt asked if there is category for vacant land, does SMART participate or pay property taxes in any other jurisdiction. Mr. Mansourian responded that government agencies are exempt from property taxes.

Director Hillmer asked if there are any constraints on the property owner for being a member of such a District. Mr. Mansourian responded that they needed 30% of property owners signatures to be place on the election, the election will be in two weeks.

District Counsel Tom Lyons stated that the property has been agreed and negotiated already. If the property does not sell, SMART will be responsible for the ongoing tax assessments until the property is sold.

Duane Bellinger stated that Community Benefits District is an excellent idea. This could be a benefit for Santa Rosa residents in which they could finance for an additional station if needed.

Willard Richards stated that the CBD tax assessment is based on the property value.

Director Zane stated that we are having a hard time to recruiting a developer to develop the property for commercial/housing.

Chairman Pro Tem Lucan asked if the General Manger Mansourian can ask for exemption. Mr. Mansourian responded that the City of Santa Rosa had to request the same action we are asking today.

Director Fudge stated that in the spirit of being a good neighbor she will vote for the CBD. Director Garbarino agrees with Director Fudge.

MOTION: Director Rabbitt moved to Vote For the formation of the Santa Rosa Railroad Square Community Benefit District (CBD) at a public hearing on October 29, 2019 as presented. Director Zane second. The motion carried 8-0 (Directors Arnold, Pahre, Phillips and Rogers absent).

Director Rogers returned at 3:48PM.

Chairman Pro Tem Lucan adjourned the Board to closed session at 3:49PM on the following:

Comments Closed Session 14a

Duane Bellinger stated that he would like if any contract arises that it be presented in open session for discussion.

14. Closed Session

- a. Conference with General Manager, Farhad Mansourian, pursuant to Government Code Section 54956.8 regarding real estate property negotiations.

Property: APN(s): 007-131-003, 007-131-004 and 137-061-019
D Street and Corona Rd, Petaluma
Negotiating Parties: Farhad Mansourian – Lomas LLC

- b. Conference with Legal Counsel regarding exposure to potential litigation pursuant to California Government Code Section 54956.9(d)(e): number of cases: 1

- c. Conference with Labor Negotiator Farhad Mansourian, General Manager pursuant to Government Code Section 54957.6

Agency Designated Representative: General Manager
Represented employees: Operating Engineers Local 3 and Unrepresented Employees

- d. Conference with the Chief of Police and General Manager regarding security of public services and public facilities pursuant to California Government Code Section 54957

15. Report out Closed Session

Director Lucan reported out of closed session at 5:02 PM on the following:

- a. Conference with General Manager, Farhad Mansourian, pursuant to Government Code Section 54956.8 regarding real estate property negotiations.

Property: APN(s): 007-131-003, 007-131-004 and 137-061-019
D Street and Corona Rd, Petaluma

Negotiating Parties: Farhad Mansourian – Lomas LLC
Report Out: No action taken. Direction given to staff.

- b. Conference with Legal Counsel regarding exposure to potential litigation pursuant to California Government Code Section 54956.9(d)(e): number of cases: 1

Report Out: No action taken. Direction given to staff.

- c. Conference with Labor Negotiator Farhad Mansourian, General Manager pursuant to Government Code Section 54957.6
Agency Designated Representative: General Manager
Represented employees: Operating Engineers Local 3 and Unrepresented Employees
Report Out: No action taken. Direction given to staff.
 - d. Conference with the Chief of Police and General Manager regarding security of public services and public facilities pursuant to California Government Code Section 54957
Report Out: No action taken. Direction given to staff.
16. Next Regular Meeting Board of Directors, November 6, 2019 – 1:30 PM – 5401 Old Redwood Highway, 1st Floor, Petaluma, CA 94954
17. Adjournment – Meeting adjourned at 5:03PM.

Respectfully submitted,

Leticia Rosas-Mendoza
Clerk of the Board

Approved on: _____



November 6, 2019

Gary Phillips, Chair
Transportation Authority of Marin

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

Judy Arnold
Marin County Board of Supervisors

Damon Connolly
Marin County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

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Farhad Mansourian
General Manager

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

SUBJECT: Approve Contract Amendment No. 3 with eLock Technologies, Inc. in the amount of \$47,490

Dear Board Members:

RECOMMENDATION:

Authorize the General Manager to execute Contract Amendment No. 3 with eLock Technologies, Inc. in an amount of \$47,490 to purchase two electronic bicycle quad lockers (8 spaces) for the Novato Downtown Station

SUMMARY

In November 2016, SMART completed a Bicycle Parking Investment Plan that evaluated current and future parking needs at our stations. The Plan was initially presented to the Board in August and then approved in November 2, 2016. The Plan did not include the Novato Downtown station because the City of Novato had not requested the station be added into the SMART system at the time the bike parking analysis was complete.

Your Board authorized the General Manager to execute the Original Agreement with eLock on January 4, 2017 to procure and install secure bike lockers at all SMART stations in the Initial Operating Segment, based on the recommendations from the Bicycle Parking Investment Plan and Title VI policy regarding equitable enhancements across all stations.

With the opening of the Novato Downtown station slated for December 2019, installation of BikeLink electronic lockers at the new station ensures integrated bike parking across the SMART system. If approved today, staff anticipates that the lockers will be installed and operational for the opening of passenger service at the Novato Downtown station.

Currently, SMART has 88 total BikeLink secured bicycle parking spaces installed, and the addition of the two new quads at Novato Downtown will bring that figure up to 96.

| Station | Electronic Secure Spaces |
|-----------------------|--------------------------|
| Sonoma County Airport | 4 |
| Santa Rosa North | 4 |
| Santa Rosa Downtown | 12 |
| Rohnert Park | 8 |
| Cotati | 8 |
| Petaluma Downtown | 12 |
| Novato San Marin | 8 |
| Novato Downtown | 8* |
| Novato Hamilton | 8 |
| Marin Civic Center | 4 |
| San Rafael | 4 |
| Larkspur | 16 |

*contingent on your approval

The recommended installation of two quads (8 bicycle parking spaces) is based on the demand demonstrated at the neighboring stations at Novato San Marin & Hamilton and based on the criteria from the Bicycle Investment Plan.

The ongoing operating costs for these eight bicycle parking spaces in this configuration is \$1,100 per year in the current service and operations agreement with eLock Technologies, Inc. and was anticipated in the Fiscal Year 2019-20 budget.

Staff recommends that the Board approve Amendment No 3 with eLock Technologies, Inc. for the not-to-exceed amount of \$47,490 for this Amendment, bringing the total not-to-exceed amount to \$371,003.

FISCAL IMPACT: Funding for the procurement & installation of the BikeLink electronic lockers is being provided by the City of Novato. Ongoing costs are included in the Fiscal Year 2019-20 budget.

REVIEWED BY: [] Finance EDM [] Counsel JB

Very truly yours,



Joanne Parker

Grants and Programming Manager

Attachment(s): eLock Contract Amendment No. 3

**THIRD AMENDMENT TO THE PURCHASE AGREEMENTS BETWEEN
SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
AND ELOCK TECHNOLOGIES, LLC**

This Third Amendment dated as of October 22, 2019 (the “Third Amendment”) to the Agreement by and between the Sonoma-Marin Area Rail Transit District (“SMART”) and the eLock Technologies, Inc. (“ELOCK”), dated as of April 18, 2017 (the “Original Agreement,” and now as amended by the First Amendment, Second Amendment, and this Third Amendment, the “Agreement”).

RECITALS

WHEREAS, SMART and ELOCK previously entered into the Original Purchase Agreement to purchase eLocker equipment, which included the following: BikeLink Warranty, Software License, Service and Operations Agreement, and User Agreement; and

WHEREAS, SMART previously amended the Service and Operations Agreement to include ARTICLE 13, INDEMNIFICATION, as well as added the installation of a G5 Quad Bike Locker unit and costs associated with that action at the Novato Hamilton station; and

WHEREAS, SMART desires to amend the scope of the Agreement to include two (2) new G5 Quad Bike Locker units to be located at the Novato Downtown SMART Station, as well as the service costs for the remainder of the Agreement, and increase the not-to-exceed amount of the Agreement by \$47,490 for a total not-to-exceed of \$371,003 to accommodate the cost of the two new Quad Bike Locker units as well as the continued operating costs through the term of the Agreement.

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

AGREEMENT

1. **“QUOTE 4494 – Rev1”** QUOTE 4494 – Rev 1 as attached is added as an addendum to ESTIMATE 4120-REV from the Original Agreement and QUOTE 4485. QUOTE 4494 – Rev1 includes the costs to add the two (2) new G5 Quad Bike Locker Units at the Novato Downtown Station and is declared current and valid by ELOCK.
2. **“14. PROJECT LOCATIONS”** Article 14 PROJECT LOCATIONS of the Purchasing & Delivery is amended to add the location of the Novato Downtown Station:

Novato Downtown Station: 695 Grant Avenue, Novato, Ca 94945

3. **“3. EQUIPMENT”** Article 3 EQUIPMENT of the **BikeLink Software License Agreement** is hereby amended to add the following edit line for Novato Downtown Station:

| Location Name | Quantity | Product | Spaces | Controllers |
|-------------------------|----------|----------------|--------|-------------|
| Novato Downtown Station | 2 | G5 Quad Locker | 8 | 4 |

4. **“2. LOCATIONS COVERED”** Article 2 LOCATIONS COVERED of the **BikeLink Service and Operations Agreement** is hereby amended to include the following line for Novato Downtown Station:

| Location Name | Quantity | Product | Spaces | Controllers |
|-------------------------|----------|----------------|--------|-------------|
| Novato Downtown Station | 2 | G5 Quad Locker | 8 | 4 |

5. **“3. PLAN TYPE(S) AND DURATION”** Article 3 PLAN TYPE(S) AND DURATION of the **BikeLink Service and Operations Agreement** is hereby amended to include the two new G5 Quad Lockers which create 8 new spaces at the Novato Downtown Station for the remainder of the term of the Agreement as follows:

| Plan | Term | Spaces | Unit Price | Total |
|--|-----------|--------|----------------|-----------------|
| eLocker On-Site Service and Operations Plan (includes Annual Software Licensing Fee) | 5 years | 68 | \$120/space/yr | \$40,800 |
| eLocker On-Site Service and Operations Plan (includes Annual Software Licensing Fee) | 3 years | 4 | \$120/space/yr | \$1,440 |
| eLocker On-Site Service and Operations Plan (includes Annual Software Licensing Fee) | 2.5 years | 8 | \$120/space/yr | \$2,400 |
| eLocker On-Site Service and Operations Plan (includes Annual Software Licensing Fee) - BAAQMD Grant 1st Year Free | 1 year | 68 | \$120/space/yr | (\$8,160) |
| | | | TOTAL | \$36,480 |

eLock Technologies, LLC
 Third Amendment
 OP-SV-17-003

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

THIS SPACE INTENTIONALLY LEFT BLANK

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

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

Dated: _____

By _____
Farhad Mansourian, General Manager

eLOCK TECHNOLOGIES, LLC

Dated: _____

By _____
Its _____

APPROVED AS TO FORM:

Dated: _____

By _____
District Counsel



November 6, 2019

Gary Phillips, Chair
Transportation Authority of Marin

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

Judy Arnold
Marin County Board of Supervisors

Damon Connolly
Marin County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
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Patty Garbarino
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Sonoma-Marin Area Rail Transit Board of Directors
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

SUBJECT: Amendment to SMART Salary Ranges and Position Allocation
Authorizations—Code Compliance Officer

Dear Board Members:

RECOMMENDATION:

Approve Resolution Number 2019-16 amending the Fiscal Year 2019-20 Budget and Revise Table 5 to authorize the addition of 0.5 Full Time Equivalent (FTE) Code Compliance Officer.

SUMMARY:

On June 5, 2019, your Board approved the annual budget for Fiscal Year 2019-20, which included authorization for all employee positions and their salary ranges.

The Fiscal Year 2019-20 budget authorized 2.5 Full Time Equivalent (FTE) Code Compliance Officers. Under direction of the District's Chief of Police, Code Compliance Officers are responsible for enforcing ordinances, regulations and laws governing the transit system. They are called upon to assist patrons and the public, ensure the safety of passengers and ensure the conditions on our pathway are safe. Since SMART began hiring Code Compliance Officers in 2016, the average tenure in the part-time position has been 4 months. On November 7, 2018 the Board approved resolution number 2018-25 which increased the salary range for the Code Compliance Officer in an attempt to improve retention, however the District continues to have difficulty attracting and retaining qualified candidates for the part-time position. The addition of 0.5 FTE Code Compliance Officers for a total of three full-time positions (3.0 FTE) will provide more stability in our staffing and increase safety along SMART's right of way. A full-time position will also be more attractive to applicants, most of whom are seeking full-time employment.

We recommend that the Board amend Table 5 in the Fiscal Year 2019-20 budget to increase the allocated positions for Code Compliance Officer from 2.5 FTE to 3.0 FTE.

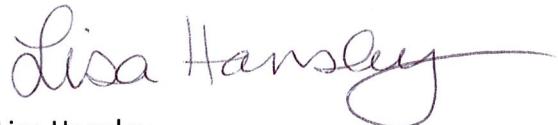
The summary of the position changes recommended in the Fiscal Year 2019-20 budget are shown below:

| POSITION | FTE | ANNUAL SALARY RANGE | |
|-------------------------|---------|---------------------|----------|
| Code Compliance Officer | 2.5-3.0 | \$64,015 | \$77,792 |

FISCAL IMPACT: The recommended changes to the Position Authorizations for Fiscal Year 2019-20 would result in an increase in salary and benefit costs of \$14,210. This cost will be absorbed in the budget using salary savings from vacant positions.

REVIEWED BY: [] Finance JM [] Counsel JS

Very truly yours,



Lisa Hansley
Human Resources Manager

Attachment(s): Resolution No. 2019-16

Resolution No. 2019-16
Sonoma-Marin Area Rail Transit District
November 6, 2019

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT AMENDING RESOLUTION NO. 2019-08 TO REVISE THE ANNUAL BUDGET FOR FISCAL YEAR 2019-20 TO PROVIDE FOR REVISED POSITION AND EXPENDITURE AUTHORITY

WHEREAS, as part of its approval of the Annual Budget for Fiscal Year 2019-20, the Board duly considered the annual expenditures necessary for the Sonoma-Marin Area Rail Transit District; and

WHEREAS, on June 5, 2019, the Board adopted Resolution No. 2019-08 approving the annual budget for Fiscal Year 2019-20; and

WHEREAS, Resolution No. 2019-08 considered the creation of employee positions and fixed the compensation and salary for those positions; and

WHEREAS, the Board desires to Amend the Annual Budget to provide the revised position authority for increased salary and benefit expenditures.

NOW, THEREFORE, BE IT RESOLVED THAT THE Fiscal Year 2019-20 Budget for the Sonoma-Marin Area Rail Transit District attached as Exhibit A to Resolution 2019-08 is hereby amended to revise Table 5, Fiscal Year 2019-20 Proposed Position Authorizations, to reflect position revisions as shown below.

| Position | FTE | Salary Range Annual | | Salary Range: Hourly | |
|-------------------------|-----|---------------------|-----------|----------------------|----------|
| | | Low | High | Low | High |
| Code Compliance Officer | 3 | \$ 64,015 | \$ 77,792 | \$ 30.78 | \$ 37.40 |

BE IT FURTHER RESOLVED except as specifically amended or supplemented by this Resolution, Resolution No. 2019-08, together with all supplements, amendments and exhibits thereto is, and shall continue to be, in full force and effect as originally adopted, and nothing contained herein shall, or shall be construed to, modify, invalidate or otherwise affect any provision of Resolution No. 2019-08.

Resolution No. 2019-16
Sonoma-Marin Area Rail Transit District
November 6, 2019

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

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

Gary Phillips, 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



November 6, 2019

Gary Phillips, Chair
Transportation Authority of Marin

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

Judy Arnold
Marin County Board of Supervisors

Damon Connolly
Marin County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Joe Naujokas
Sonoma County Mayors' and
Councilmembers Association

David Rabbitt
Sonoma County Board of Supervisors

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Shirlee Zane
Sonoma County Board of Supervisors

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: Appropriation of Funds Related to Emergency

Dear Board Members:

RECOMMENDATION:

Approve Resolution No. 2019-19 for appropriation of additional funds to prepare for and manage transit service during the public power shutdown and fire evacuations.

SUMMARY

In an emergency, SMART's enabling legislation allows designated personnel to order work or purchase supplies if it is necessary to avert or alleviate damage to District property or to ensure that District's facilities are available to serve the transportation needs of the general public.

In preparation for and during the shutdown and fire emergency SMART staff took action to ensure SMART facilities were ready to continue to operate without power for an extended period of time and respond to changing circumstances as they might arise. This included the purchase of emergency generators, associated cables and equipment, air masks and purifiers. In addition, SMART staff were called to work around the clock to protect our 18 train cars and monitor the safety and functionality of all our facilities.

In total, SMART anticipates that it will have spent \$103,700 on both preparing for and managing the emergency. While each action taken during this time was within the authority of the General Manager, we are asking your Board to appropriate additional funds for these emergency actions. Because the Governor declared an emergency for the high wind event, SMART will proceed with requesting reimbursement for expenses from the State through the Office of Emergency Services.

FISCAL IMPACT: Approval of the resolution provides additional appropriation authority in the Fiscal Year 2019-20 budget of \$103,700. Funding will come from SMART's reserves. SMART will request reimbursement from the State of California for these expenditures.

Very truly yours,

A blue ink signature of the name "Erin McGrath".

Erin McGrath
Chief Financial Officer

Attachment(s): Resolution No. 2019-19

Resolution No. 2019-19
Sonoma-Marin Area Rail Transit District
November 6, 2019

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
AMENDING RESOLUTION NO. 2019-08 TO REVISE THE ANNUAL BUDGET FOR FISCAL YEAR 2019-20 TO
PROVIDE FOR REVISED EXPENDITURE AUTHORITY**

WHEREAS, as part of its approval of the Annual Budget for Fiscal Year 2019-20, the Board duly considered the annual expenditures necessary for the Sonoma-Marin Area Rail Transit District; and

WHEREAS, on June 5, 2019, the Board adopted Resolution No. 2019-08 approving the annual budget for Fiscal Year 2019-20; and

WHEREAS, Resolution No. 2019-08 considered the appropriation of funds for Operating expenses as part of the Annual Budget; and

WHEREAS, the Board desires to Amend the Annual Budget to provide increased appropriation authority related to emergency expenditures needed in order to avert damage to the property of the District and ensure that the facilities of the District are available to serve the transportation needs of the general public.

NOW, THEREFORE, BE IT RESOLVED THAT THE Fiscal Year 2019-20 Budget for the Sonoma-Marin Area Rail Transit District attached as Exhibit A to Resolution 2019-08 is hereby amended to increase expenditure authority by \$103,700.

BE IT FURTHER RESOLVED except as specifically amended or supplemented by this Resolution, Resolution No. 2019-08, together with all supplements, amendments and exhibits thereto is, and shall continue to be, in full force and effect as originally adopted, and nothing contained herein shall, or shall be construed to, modify, invalidate or otherwise affect any provision of Resolution No. 2019-08.

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

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

Gary Phillips, 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



November 6, 2019

Gary Phillips, Chair
Transportation Authority of Marin

Barbara Pahre, Vice Chair
Golden Gate Bridge,
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Petaluma, CA 94954

SUBJECT: Consideration of a Pilot Program providing free rides for Military Veterans and Active Duty Military and their families on Veterans Day Weekend (November 9, 10, and 11, 2019)

Dear Board Members:

RECOMMENDATIONS:

Approve the creation of a Pilot Program to allow for free rides on SMART for Military Veterans and Active Duty Military and their families on Veterans Day Weekend (November 9, 10, and 11, 2019)

SUMMARY:

This proposed Free SMART Rides for Military Veterans and Active Duty Military and their families Pilot Program would encourage new riders to try riding SMART where onboard capacity exists, as well as honoring those who are or have served in the United States military. To be eligible for the free rides, military veteran personnel must present an active duty or Veteran identification card to the SMART Conductor onboard the train.

Your Board approved similar Pilot Programs previously for the Memorial Day Weekend.

There are approximately 12,199 veterans in Marin County and 28,160 veterans in Sonoma County. No exact figures of active duty military personnel are readily available, but the estimated number of U.S. Coast Guard personnel in Sonoma and Marin Counties is around 500-600.

FISCAL IMPACT: Loss of Active Duty Military and Veteran and their family fares and increase in marketing and outreach costs are estimated at less than \$10,000 and could be offset by increased future ridership after the free-period.

Very truly yours,

Farhad Mansourian
General Manager



November 6, 2019

Gary Phillips, Chair
Transportation Authority of Marin

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

Judy Arnold
Marin County Board of Supervisors

Damon Connolly
Marin County Board of Supervisors

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Sonoma County Mayors' and
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Dan Hillmer
Marin County Council of Mayors and
Councilmembers

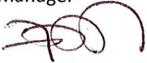
Eric Lucan
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Sonoma-Marin Area Rail Transit Board of Directors
 5401 Old Redwood Highway, Suite 200
 Petaluma, CA 94954

SUBJECT: Approval of Resolution Implementing Cost-of-Living Increase for Unrepresented Employees

Dear Board Members:

RECOMMENDATION:

Approve Resolution Number 2019-17 which would Revise Table 5 in the Fiscal Year 2019-2020 budget to reflect unrepresented employee salary schedule increases.

SUMMARY:

SMART currently has 53 job classes that are not represented as part of any collective bargaining unit. There are 76.5 authorized Full Time Equivalent Employees (FTE) associated with those job classes. These employees have not received a cost of living adjustment (COLA) in the past year.

Your Board has previously approved two union agreements with the same Cost of Living Adjustment (COLA) of 2.7% in the current fiscal year. The first labor agreement with the Teamsters Union was effective on July 1, 2019. The second agreement, with the International Association of Machinists and Aerospace Workers, was effective on October 7, 2019.

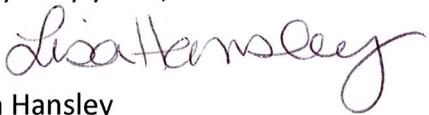
In addition, as part of our efforts to retain and attract qualified, dedicated employees, we have reviewed the Bureau of Labor Statistics (BLS) Consumer Price Index (CPI) as well as cost of living adjustments made by other public agencies in the North Bay with similar job classes. The CPI for the Western Region, which includes Sonoma County, was 2.7% in June and July 2019 and in August 2019 it was 2.6%. The CPI for the San Francisco-Oakland-Hayward region, of which Marin County is a part, was 2.7% in August 2019. At this time, we are recommending a 2.7% increase for our non-represented employees in order to stay competitive. This increase would be effective retroactive to November 4, 2019, the beginning of the most recent pay period.

In order to implement this COLA, we request your Board approve Resolution Number 2019-17 to revise Table 5 of the FY 2019-20 budget to reflect this 2.7% increase in the approved salary schedule.

FISCAL IMPACT: The Fiscal Year 2019-20 cost of the proposed salary increase is \$57,596, which is included in SMART's FY 2019-20 budgeted salary and benefits.

REVIEWED BY: [] Finance JM [] Counsel JS

Very truly yours,


Lisa Hansley
Human Resources Manager

Attachment(s): Resolution No. 2019-17

Resolution No. 2019-17
Sonoma-Marin Area Rail Transit District
November 6, 2019

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
AMENDING RESOLUTION NO. 2019-08 TO REVISE THE ANNUAL BUDGET FOR FISCAL YEAR 2019-20 TO
PROVIDE FOR REVISED POSITION AUTHORITY**

WHEREAS, as part of its approval of the Annual Budget for Fiscal Year 2019-20, the Board duly considered the annual expenditures necessary for the Sonoma-Marin Area Rail Transit District; and

WHEREAS, on June 5, 2019, the Board adopted Resolution No. 2019-08 approving the annual budget for Fiscal Year 2019-20; and

WHEREAS, Resolution No. 2019-08 considered the creation of employee positions and fixed the compensation and salary for those positions; and

WHEREAS, the Board desires to Amend the Annual Budget to provide the revised position authority for increased salary and benefit expenditures.

NOW, THEREFORE, BE IT RESOLVED THAT THE Fiscal Year 2019-20 Budget for the Sonoma-Marin Area Rail Transit District attached as Exhibit A to Resolution 2019-08 is hereby amended to revise Table 5, Fiscal Year 2019-20 Proposed Position Authorizations as attached to this resolution.

BE IT FURTHER RESOLVED except as specifically amended or supplemented by this Resolution, Resolution No. 2019-08, together with all supplements, amendments and exhibits thereto is, and shall continue to be, in full force and effect as originally adopted, and nothing contained herein shall, or shall be construed to, modify, invalidate or otherwise affect any provision of Resolution No. 2019-08.

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

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

Gary Phillips, 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

TABLE 5:**Fiscal Year 2019-20 : Proposed Position Authorization**

| Position | FTE | Salary Range Annual | | Salary Range: Hourly | | CHANGE |
|--|-----|---------------------|------------|----------------------|-----------|-------------------|
| | | Low | High | Low | High | |
| ADMINISTRATIVE POSITIONS | | | | | | |
| Accountant | 1 | \$ 74,368 | \$ 90,402 | \$ 35.75 | \$ 43.46 | Adjusted for COLA |
| Accounting and Payroll Assistant | 1 | \$ 53,950 | \$ 65,580 | \$ 25.94 | \$ 31.53 | Adjusted for COLA |
| Administrative Analyst/ Contracts | 1 | \$ 82,091 | \$ 99,780 | \$ 39.47 | \$ 47.97 | Adjusted for COLA |
| Administrative Assistant | 1 | \$ 51,334 | \$ 62,397 | \$ 24.68 | \$ 30.00 | Adjusted for COLA |
| Assistant General Counsel | 1 | \$ 141,322 | \$ 171,769 | \$ 67.94 | \$ 82.59 | Adjusted for COLA |
| Assistant Planner* | 1 | \$ 70,804 | \$ 86,066 | \$ 34.04 | \$ 41.38 | Adjusted for COLA |
| Chief Financial Officer | 1 | \$ 225,921 | \$ 274,646 | \$ 108.62 | \$ 132.04 | Adjusted for COLA |
| Clerk of the Board | 1 | \$ 78,087 | \$ 94,922 | \$ 37.54 | \$ 45.64 | Adjusted for COLA |
| Communications and Marketing Manager | 1 | \$ 137,889 | \$ 167,603 | \$ 66.29 | \$ 80.57 | Adjusted for COLA |
| Community Outreach Coordinator | 2 | \$ 72,564 | \$ 88,202 | \$ 34.89 | \$ 42.40 | Adjusted for COLA |
| Community Outreach Specialist | 1 | \$ 113,159 | \$ 137,547 | \$ 54.40 | \$ 66.13 | Adjusted for COLA |
| Deputy General Manager | 1 | \$ 248,188 | \$ 301,669 | \$ 119.32 | \$ 145.03 | Adjusted for COLA |
| Fiscal Manager | 1 | \$ 128,054 | \$ 155,619 | \$ 61.56 | \$ 74.82 | Adjusted for COLA |
| General Counsel | 1 | \$ 225,921 | \$ 274,646 | \$ 108.62 | \$ 132.04 | Adjusted for COLA |
| General Manager | 1 | \$ - | \$ 319,960 | \$ - | \$ 153.83 | Adjusted for COLA |
| Human Resources Manager | 1 | \$ 124,908 | \$ 151,838 | \$ 60.05 | \$ 73.00 | Adjusted for COLA |
| Human Resources Principal Analyst | 1 | \$ 113,159 | \$ 137,547 | \$ 54.40 | \$ 66.13 | Adjusted for COLA |
| Human Resources Technician | 1 | \$ 67,371 | \$ 81,900 | \$ 32.39 | \$ 39.37 | Adjusted for COLA |
| Information Systems Specialist | 1 | \$ 124,908 | \$ 151,838 | \$ 60.05 | \$ 73.00 | Adjusted for COLA |
| Information Systems Technician | 1 | \$ 74,368 | \$ 90,402 | \$ 35.75 | \$ 43.46 | Adjusted for COLA |
| Legal Administrative Assistant | 1 | \$ 67,371 | \$ 81,900 | \$ 32.39 | \$ 39.37 | Adjusted for COLA |
| Payroll Technician | 1 | \$ 53,950 | \$ 65,580 | \$ 25.94 | \$ 31.53 | Adjusted for COLA |
| Procurement Coordinator | 1 | \$ 105,084 | \$ 127,721 | \$ 50.52 | \$ 61.41 | Adjusted for COLA |
| Programming and Grants Manager | 1 | \$ 144,864 | \$ 176,105 | \$ 69.65 | \$ 84.66 | Adjusted for COLA |
| Real Estate Manager | 1 | \$ 155,975 | \$ 189,606 | \$ 74.99 | \$ 91.16 | Adjusted for COLA |
| Safety & Compliance Officer | 1 | \$ 128,054 | \$ 155,619 | \$ 61.56 | \$ 74.82 | Adjusted for COLA |
| Senior Administrative Analyst | 1 | \$ 92,872 | \$ 112,896 | \$ 44.65 | \$ 54.27 | Adjusted for COLA |
| Senior Planner | 1 | \$ 97,581 | \$ 118,600 | \$ 46.91 | \$ 57.02 | Adjusted for COLA |
| Senior Real Estate Officer | 1 | \$ 105,084 | \$ 127,721 | \$ 50.52 | \$ 61.41 | Adjusted for COLA |
| Supervising Accountant | 1 | \$ 90,606 | \$ 110,140 | \$ 43.56 | \$ 52.95 | Adjusted for COLA |
| Subtotal Administrative Full Time Equivalents (FTE) | | | | 31 | | |

Table 5 : Continued on Next Page (Page 1 of 3)

TABLE 5:**Fiscal Year 2019-20 : Proposed Position Authorization**

| Position | FTE | Salary Range Annual | | Salary Range: Hourly | | CHANGE |
|---|-----|---------------------|------------|----------------------|-----------|-------------------|
| | | Low | High | Low | High | |
| CAPITAL POSITIONS | | | | | | |
| Assistant Engineer * | 4 | \$ 88,406 | \$ 107,449 | \$ 42.50 | \$ 51.66 | Adjusted for COLA |
| Associate Engineer* | 2 | \$ 105,084 | \$ 127,721 | \$ 50.52 | \$ 61.41 | Adjusted for COLA |
| Junior Engineer * | 1 | \$ 78,131 | \$ 94,974 | \$ 37.56 | \$ 45.66 | Adjusted for COLA |
| Principal Engineer* | 1 | \$ 137,879 | \$ 167,592 | \$ 66.29 | \$ 80.57 | Adjusted for COLA |
| Senior Engineer* | 1 | \$ 121,865 | \$ 148,127 | \$ 58.59 | \$ 71.22 | Adjusted for COLA |
| Chief Engineer | 1 | \$ 185,415 | \$ 225,386 | \$ 89.14 | \$ 108.36 | Adjusted for COLA |
| Manager Train Control Systems | 1 | \$ 185,415 | \$ 225,386 | \$ 89.14 | \$ 108.36 | Adjusted for COLA |
| Project Extra hires * | | \$ - | \$ 50,000 | \$ - | \$ - | |
| Subtotal Capital Full Time Equivalents (FTE) | | 11 | | | | |

* Denotes Limited-Term Position Dependent on Project need

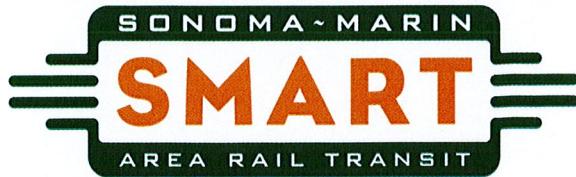
Table 5 : Continued on Next Page (Page 2 of 3)

TABLE 5:**Fiscal Year 2019-20 : Proposed Position Authorization**

| Position | FTE | Salary Range Annual | | Salary Range: Hourly | | CHANGE |
|--|--------------|---------------------|------------|----------------------|-----------|-------------------|
| | | Low | High | Low | High | |
| OPERATIONS POSITIONS | | | | | | |
| Administrative Assistant | 1 | \$ 51,334 | \$ 62,397 | \$ 24.68 | \$ 30.00 | Adjusted for COLA |
| Administrative Analyst-Purchasing | 1 | \$ 82,091 | \$ 99,780 | \$ 39.47 | \$ 47.97 | Adjusted for COLA |
| Administrative Services Manager | 1 | \$ 88,406 | \$ 107,449 | \$ 42.50 | \$ 51.66 | Adjusted for COLA |
| Assistant Superintendent of Transportation | 1 | \$ 107,724 | \$ 130,904 | \$ 51.79 | \$ 62.93 | Adjusted for COLA |
| Bridge Tender* | 2.5 | - | \$ 61,859 | - | \$ 29.74 | |
| Chief of Police | 1 | \$ 167,989 | \$ 204,196 | \$ 80.76 | \$ 98.17 | Adjusted for COLA |
| Code Compliance Officer | 3 | \$ 65,743 | \$ 79,892 | \$ 31.61 | \$ 38.41 | Adjusted for COLA |
| Controller /Supervisor | 10 | \$ 94,743 | \$ 115,161 | \$ 45.55 | \$ 55.37 | Adjusted for COLA |
| Conductor** | 11 | \$ 66,123 | \$ 77,792 | \$ 31.79 | \$ 37.40 | |
| Engineer-Conductor** | 29 | \$ 79,498 | \$ 93,517 | \$ 38.22 | \$ 44.96 | |
| Extra Hires Operations | | - | \$ 350,000 | - | - | |
| Facilities Maintenance Supervisor | 1 | \$ 97,581 | \$ 118,600 | \$ 46.91 | \$ 57.02 | Adjusted for COLA |
| Facilities Maintenance Technician | 3 | - | \$ 77,293 | - | \$ 37.16 | |
| Laborers-Vehicle Maintenance | 10 | - | \$ 61,318 | - | \$ 29.48 | |
| Laborers-Track Maintenance | 2 | - | \$ 54,643 | - | \$ 28.90 | Adjusted for COLA |
| Operations Manager | 1 | \$ 185,415 | \$ 225,386 | \$ 89.14 | \$ 108.36 | Adjusted for COLA |
| Parts Clerk | 2 | \$ 61,035 | \$ 74,189 | \$ 29.34 | \$ 35.67 | Adjusted for COLA |
| Railroad Information Systems Specialist | 1 | \$ 110,408 | \$ 134,194 | \$ 53.08 | \$ 64.52 | Adjusted for COLA |
| Safety & Compliance Officer | 1 | \$ 128,054 | \$ 155,619 | \$ 61.56 | \$ 74.82 | Adjusted for COLA |
| Signal Supervisor | 2 | \$ 105,084 | \$ 127,721 | \$ 50.52 | \$ 61.41 | Adjusted for COLA |
| Signal Technician | 9 | - | \$ 106,475 | - | \$ 51.19 | |
| Superintendent of Vehicle Maintenance | 1 | \$ 128,054 | \$ 155,619 | \$ 61.56 | \$ 74.82 | Adjusted for COLA |
| Superintendent of Transportation | 1 | \$ 128,054 | \$ 155,619 | \$ 61.56 | \$ 74.82 | Adjusted for COLA |
| Superintendent Signals and Way | 1 | \$ 128,054 | \$ 155,619 | \$ 61.56 | \$ 74.82 | Adjusted for COLA |
| Track Maintainer 1 | 4 | - | \$ 79,643 | - | \$ 38.29 | |
| Track Maintainer 2 | 1 | - | \$ 87,589 | - | \$ 42.11 | |
| Track Maintenance Supervisor | 2 | \$ 97,372 | \$ 118,368 | \$ 46.81 | \$ 56.91 | |
| Vehicle Maintenance Supervisor | 4 | \$ 100,001 | \$ 121,564 | \$ 48.08 | \$ 58.45 | Adjusted for COLA |
| Vehicle Maintenance Technician | 12 | - | \$ 97,323 | - | \$ 46.79 | |
| Subtotal Operations Full Time Equivalents (FTE)** | 107.5 | | | | | |
| TOTAL ALL SMART DEPARTMENTS | 149.5 | | | | | |

** Engineer/Conductor may be filled by Conductors, Total FTE for both positions combined is 29

Table 5: Page 3 of 3



November 6, 2019

Gary Phillips, Chair
Transportation Authority of Marin

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

Judy Arnold
Marin County Board of Supervisors

Damon Connolly
Marin County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Joe Naujokas
Sonoma County Mayors' and
Councilmembers Association

David Rabbitt
Sonoma County Board of Supervisors

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Shirlee Zane
Sonoma County Board of Supervisors

Farhad Mansourian
General Manager

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

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

SUBJECT: Conduct Second Reading of Ordinance No. 2019-01 as amended on October 16, 2019; Approve Ordinance No. 2019-01 Extending the Sonoma-Marin Area Rail Transit District's One-Quarter of One Cent (1/4-cent) Retail Transaction and Use Tax

Dear Board of Directors:

RECOMMENDATION:

1. Incorporate and adopt the clarifying changes to the above-named Ordinance No. 2019-01, as shown in redlined, suggested during the First Reading on October 16, 2019;
2. Waive the Second Reading of Ordinance No. 2019-01 Extending the Sonoma-Marin Area Rail Transit District's One-Quarter of One Cent Retail Transaction and Use Tax;
3. Approve and adopt Ordinance No. 2019-01 as amended – Extending the Sonoma-Marin Area Rail Transit District's One-Quarter of One Cent Retail Transactions and Use Tax.

BACKGROUND

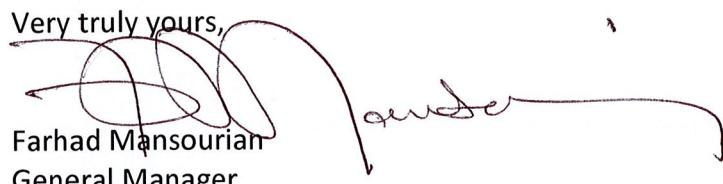
On October 16, 2019, your Board unanimously approved the Expenditure Plan. Upon approval of Expenditure Plan, your Board then conducted a First Reading of Ordinance No. 2019-01, and made suggested clarifying changes to be incorporated into the Ordinance and scheduled the Second Reading for Ordinance No. 2019-01.

DISCUSSION/ANALYSIS

At the first reading of Ordinance No. 2019-01 Extending the Sonoma-Marin Area Rail Transit District's One-Quarter of One Cent Retail Transaction and Use Tax at the October 16, 2019 Meeting, your Board provided comments to staff and ministerial edits were made to Ordinance No. 2019-01 to clarify language and improve readability. According to our District Counsel, these changes are not considered material or substantive in nature.

Following the action on this item, your Board will be considering adopting Resolution Number 2019-18. Calling for an election to be consolidated with the statewide election to be held on March 3, 2020 for the purpose of submitting to the voters of Sonoma and Marin Counties a measure seeking authorization to extend the existing Sonoma-Marin Area Rail Transit District's one quarter of one-cent transaction and use tax for an additional 30 years.

FISCAL IMPACT: Funding for the amendment is included in the Fiscal Year 2019-20 budget.

Very truly yours,

Farhad Mansourian
General Manager

Attachment (s):

- 1) Ordinance No. 2019-01: Extending the Sonoma-Marin Area Rail transit District's One-Quarter of One cent (1/4-cent) Retail Transaction and Use Tax
- 2) Ordinance No. 2019-01 (redlined version)

FULL TEXT OF MEASURE _____
ORDINANCE NO. 2019-01

**EXTENSION OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT'S EXISTING
ONE-QUARTER OF ONE CENT RETAIL TRANSACTION AND USE TAX**

PREAMBLE:

The voters of Sonoma and Marin County are requested to approve and extend the retail transaction and use tax (Measure Q) at the same rate of one-quarter of one cent ($\frac{1}{4}$ -cent) to:

Continue relieving traffic congestion, reducing greenhouse gas emissions (having carried 1.5-million passengers by providing quality transportation alternatives to Highway 101).

Continue to implement, construct, operate and maintain the SMART rail transit system and pathways; build additional rail lines, bicycle and pedestrian pathways, enhance local and regional transportation options.

Keep the rail transportation and pathways systems safe; build, rebuild and retrofit bridges, trestles, railroad crossings and intersections and keep the transportation system in safe and good working condition.

Embrace technology and safety innovation; incorporate modern technology, new advancements and emerging innovations in the rail transportation system.

Make public transportation more accessible, convenient, and affordable for seniors, students, and the people with disabilities and provide better mobility options for our ageing population.

Create jobs, help reduce pollution, and generate local economic benefits;

Provide accountability; protect and monitor the public's investments through independent audits and oversight while maintaining the flexibility needed to respond to emerging needs.

SMART FINDS AND ORDAINS AS FOLLOWS:

- I. On November 4, 2008, the voters of Sonoma and Marin Counties approved Measure Q at the General election, and authorized the SMART District be given the responsibility to administer the proceeds from a one-quarter of one percent retail transactions and use tax.
- II. On October 16, 2019, the District approved a Sales Tax Expenditure Plan ("Expenditure Plan"). The SMART District can now adopt a retail transactions and use tax ordinance and request to have the Registrar of Voters of the Counties of Sonoma and Marin place a one-quarter of one cent ($\frac{1}{4}$ -cent) retail transactions and use tax measure to finance the Sales Tax Expenditure Plan on the March 3, 2020 ballot for consideration by the Marin and Sonoma electorate. The ballot measure would require 2/3-voter approval in order to pass.

- III. The Sales Tax Expenditure Plan outlines a program for utilizing the proceeds of a one-quarter of one cent retail transactions and use tax extension, which can only be spent on transportation purposes in Marin and Sonoma County. The Sales Tax Expenditure Plan consists of four implementation categories, and is designed to maintain and improve rail transportation infrastructure, refinance and restructure construction debt and provide high quality transportation options for people of all ages who live, work and travel in Sonoma and Marin Counties. The Sales Tax Expenditure Plan provides a high degree of accountability, while maintaining the flexibility needed to respond to emerging needs.
- IV. Upon approval of the tax measure by the voters of Sonoma and Marin Counties, the existing tax will be extended, for an additional thirty year period through April 1, 2059 with the expenditure plan setting forth transportation services, operations, projects, programs and other improvements eligible to be funded, specifying eligibility and other conditions and criteria under which such revenues shall be expended, and making provisions for the adoption of future Sales Tax Expenditure Plan amendments.

SECTION 1. TITLE.

This ordinance shall be known as the "Extension of SMART existing one-quarter of one cent ($\frac{1}{4}$ -cent) Retail Transaction and Use Tax". The Sonoma-Marin Area Rail Transit District hereinafter shall be called "District." This ordinance shall be applicable in the incorporated and unincorporated territory of the Counties of Sonoma and Marin, which shall be referred to herein as "District."

SECTION 2. OPERATIVE DATE/ADOPTION

"Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the effective date of this ordinance, as set forth below.

Continuation of retail transactions and use tax: This Ordinance will extend and renew the retail transaction and use tax (Measure Q) at the same rate of one-quarter of one cent ($\frac{1}{4}$ -cent) within Sonoma and Marin County immediately upon the expiration of the Tax imposed by Ordinance No. 2008-01 of the Sonoma-Marin Area Rail Transit District (Measure Q). There shall be no concurrent assessment of the existing tax and the tax to be imposed pursuant to this Ordinance. Nothing in this ordinance is intended to modify, repeal, or alter ordinance 2008-01 previously adopted by the District other than to amend and extend the period of collection for an additional 30-years.

SECTION 3. PURPOSE.

This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

- A. To maintain a local funding source for the design, construction, implementation, operation, financing, maintenance and management of a passenger railroad transportation system and a bicycle/pedestrian pathways connecting stations.

- B. To impose and extend a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 105115 of the Public Utilities Code which authorizes the District to adopt this tax ordinance which shall be operative if a two-thirds majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.
- C. To adopt a retail transaction and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.
- D. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefor that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.
- E. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

SECTION 4. CONTRACT WITH STATE.

District shall contract with the California Department of Tax and Fee Administration CDTFA to perform all functions incident to the administration and operation of this transactions and use tax.

SECTION 5. TRANSACTIONS TAX RATE.

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated and unincorporated territory of the District at the rate of one-quarter of one percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date. This shall extend the tax to be imposed for an additional period of thirty years.

SECTION 6. PLACE OF SALE.

For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the state or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the California Department of Tax and Fee Administration.

SECTION 7. USE TAX RATE.

An excise tax is hereby imposed on the storage, use or other consumption in the District of tangible personal property purchased from any retailer on and after the operative tax date for storage, use or other consumption in said territory at the rate of one-quarter of one percent of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made. This shall extend the tax to be imposed for an additional period of thirty years.

SECTION 8. ADOPTION OF PROVISIONS OF STATE LAW.

Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

SECTION 9. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES.

In adopting the provisions of Part I of Division 2 of the Revenue and Taxation Code, wherever the State of California is named or referred to as the taxing agency, the name of District shall be substituted therefore. The substitution, however, shall not be made when the word State is used as part of the title of the State Controller, State Treasurer, State Board of Control, California Department of Tax and Fee Administration, State Treasury, or the Constitution of the State of California if the substitution would require action to be taken by or against the Authority or any agency, officer, or employee thereof rather than by or against the CDTFA, as successor to the State Board of Equalization, in performing the functions incident to the administration or operation of this ordinance. The substitution shall not be made in those sections, including, but not necessarily limited to, sections referring to the exterior borders of the State of California, where the result of the substitution would be to provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use, or other consumption remains subject to tax by the state under the said provisions of that code. The substitution shall not be made in Sections 6701, 6702, (except in the last sentence thereof), 6711, 6715, 6737, 6797, or 6828 of the Revenue and Taxation Code. The name of the District shall be substituted for the word "state" in the phrase "retailer engaged in business in this state" in Section 6203 and in the definition of that phrase in Section 6203. A retailer engaged in business in the District shall not be required to collect use tax from the purchaser of tangible personal property unless the retailer ships or delivers the property into the District or participates within the District in making the sale of the property, including, but not limited to soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the District or through any representative, agent, canvasser, solicitor, subsidiary, or person in the District under authority of the retailer. "A retailer engaged in business in the District" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Chapter 2 of Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the District.

SECTION 10. PERMIT NOT REQUIRED.

If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this Ordinance.

SECTION 11. EXEMPTIONS AND EXCLUSIONS, AND CREDITS.

- A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Bums Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.
- B. There are exempted from the computation of the amount of transactions tax the gross receipts from:
 1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the County in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.
 2. Sales of property to be used outside the District which is shipped to a point outside the District, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the District shall be satisfied:
 - a) With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-District address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and
 - b) With respect to commercial vehicles, by registration to a place of business out-of-District and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.
 3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.
 4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.
 5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible

personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

- C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this District of tangible personal property:
 - 1. The gross receipts from the sale of which have been subject to a transactions tax under any state administered transactions and use tax ordinance.
 - 2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.
 - 3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.
 - 4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.
 - 5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
 - 6. Except as provided in subparagraph (7), a retailer engaged in business in the District shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the District or participates within the District in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the district or through any representative, agent, canvasser, solicitor, subsidiary, or person in the District under the authority of the retailer.
 - 7. "A retailer engaged in business in the District" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the District.

D. Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

SECTION 12. AMENDMENTS.

All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

SECTION 13. ENJOINING COLLECTION FORBIDDEN.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the District, or against any officer of the State or the District, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

SECTION 14. ANNUAL APPROPRIATIONS LIMIT.

Taking into account the proceeds of taxes available to the District, including tax revenue that would become available upon approval of this ordinance, the appropriations limit of the Sonoma-Marin Area Rail Transit District for fiscal year 2019-2020 was established at \$142,288,336 million, unless that amount should be amended pursuant to applicable law.

SECTION 15. ADOPTION OF EXPENDITURE PLAN AND ACCOUNTABILITY FOR EXPENDITURE OF PROCEEDS OF THE TAX.

The District Board of Directors hereby adopts the Expenditure Plan attached hereto and incorporated into this ordinance by reference. Proceeds of the tax imposed by this ordinance shall be spent on uses set forth in the Expenditure Plan, including; operation, design, construction, financing, maintenance and management of the rail system and bicycle/pedestrian pathway. The District may propose and amend the expenditure Plan to provide for the use of additional federal, state and local funds, to account for unexpected revenues, to add or delete a project or program or to take into consideration unforeseen circumstances.

SECTION 16. ANNUAL REPORT.

The Chief Financial Officer of the Sonoma-Marin Area Rail Transit District shall annually cause to be prepared a report setting forth the amount of funds collected and expended; and the status of operations and any use authorized to be funded in the Expenditure Plan adopted by the District.

SECTION 17. COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).

Pursuant to the State CEQA Guidelines section 15378(b)(4), adoption of this retail transactions and use

tax ordinance as a government funding mechanism is not a project subject to the requirements of CEQA. Pursuant to State CEQA Guidelines section 15276, CEQA does not apply to the expenditure plan. This ordinance creates a government funding mechanism that does not involve a commitment to a specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax is used for a purpose that has such effect, the District will have reviewed or would undertake the required environmental review prior to that particular project implementation.

SECTION 18. SEVERABILITY.

If any terms, provision or portions of this ordinance or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of the ordinance or portions of this ordinance and the application of such provision to other persons or circumstances shall not be affected thereby and remain in full force and effect unless amended or modified by the District.

SECTION 19. PROPOSITION

There shall be proposed to the voters of Sonoma and Marin Counties the following proposition:

To continue relieving traffic congestion, reducing greenhouse gas emissions (having carried 1.5-million passengers by providing quality transportation alternatives to Highway 101), connecting stations with pathways, expanding rail service to Healdsburg/Cloverdale as grants become available, shall an extension of the existing Sonoma-Marin Area Rail Transit District 1/4-cent voter approved sales tax, at the same rate, generating approximately \$40,000,000 annually for an additional 30 years, subject to audits and citizens' oversight, that the State cannot take away, be adopted?

SECTION 20. EFFECTIVE DATE AND POSTING.

This ordinance shall be, and is hereby declared to be, in full force and effect at the close of the polls on the day of election at which the proposition is adopted by two-thirds vote of the electors voting on the measure. Although this ordinance shall be deemed to be effective once adopted by two-thirds vote of the electors voting, the new term and related tax and fiscal provisions of this ordinance shall not be in effect until April 1, 2029, except as modified below in the case of new bond issuance. To the extent that the District may desire prior to April 1, 2029 to issue bonds secured by future revenues from the extension of the tax provisions adopted herein, the provisions of this ordinance shall be operative at said earlier date for application to said revenues and bonds, allocations of any funds derived from said bonds, development of guidelines for use of said bond revenues, administration of the Expenditure Plan adopted hereunder. A summary of the Ordinance shall be posted within 15 days after its passage in a prominent location at the District Office with the names of the Directors voting for and against same.

SECTION 21. TERMINATION DATE.

The authority to levy the tax imposed by this ordinance shall expire on April 1, 2059.

PASSED AND ADOPTED by the Board of Directors of the Sonoma-Marin Area Rail Transit District on November ___, 2019 by the following vote:

DIRECTORS:

AYES:

NOES

ABSENT

ABSTAIN

Gary Phillips, Chair Board of Directors
Sonoma-Marin Area Rail Transit District

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

FULL TEXT OF MEASURE _____
ORDINANCE NO. 2019-01

EXTENSION OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT'S
ORDINANCE EXTENDING THE CURRENT EXISTING ONE-QUARTER OF ONE CENT
RETAIL TRANSACTION AND USE TAX

PREAMBLE:

The voters of Sonoma and Marin County are requested to approve and extend the retail transaction and use tax (Measure Q) at the same rate of one-quarter of one cent ($\frac{1}{4}$ -cent) to:

Continue relieving traffic congestion, reducing greenhouse gas emissions (having carried 1.5-million passengers by providing quality transportation alternatives to Highway 101).

Continue to implement, construct, operate and maintain the SMART rail transit system and pathways; build additional rail lines, bicycle and pedestrian pathways, enhance local and regional transportation options.

Keep the rail transportation and pathways systems safe; build, rebuild and retrofit bridges, trestles, railroad crossings and intersections and keep the transportation system in safe and good working condition.

Embrace technology and safety innovation; incorporate modern technology, new advancements and emerging innovations in the rail transportation system.

Make public transportation more accessible, convenient, and affordable for seniors, students, and the people with disabilities and provide better mobility options for our ageing population.

Create jobs, help reduce pollution, and generate local economic benefits;

Provide accountability; protect and monitor the public's investments through independent audits and oversight while maintaining the flexibility needed to respond to emerging needs.

SMART FINDS AND ORDAINS AS FOLLOWS: FINDINGS:

- I. On November 4, 2008, the voters of Sonoma and Marin Counties approved Measure Q at the General election; and authorized the SMART District be given the responsibility to administer the proceeds from a one-quarter of one percent retail transactions and use tax.
- II. On October 16, 2019, the District approved a Sales Tax Expenditure Plan ("Expenditure Plan"). The SMART District can now adopt a retail transactions and use tax ordinance and request to have the Registrar of Voters of the Counties of Sonoma and Marin place a one-quarter of one cent ($\frac{1}{4}$ -cent) retail transactions and use tax measure to finance the Sales Tax Expenditure Plan on the March 3, 2020 ballot for consideration by the Marin and Sonoma electorate. The ballot measure would require 2/3-voter approval in order to pass.

- III. The Sales Tax Expenditure Plan outlines a program for utilizing the proceeds of a one-quarter of one cent retail transactions and use tax extension, which can only be spent on transportation purposes in Marin and Sonoma County. The Sales Tax Expenditure Plan consists of four implementation categories, and is designed to maintain and improve rail transportation infrastructure, refinance and restructure construction debt and provide high quality transportation options for people of all ages who live, work and travel in Sonoma and Marin Counties. The Sales Tax Expenditure Plan provides a high degree of accountability, while maintaining the flexibility needed to respond to emerging needs.
- IV. Upon approval of the tax measure by the voters of Sonoma and Marin Counties, the existing tax will be extended, for an additional thirty year period through April 1, 2059 with the expenditure plan setting forth transportation services, operations, projects, programs and other improvements eligible to be funded, specifying eligibility and other conditions and criteria under which such revenues shall be expended, and making provisions for the adoption of future Sales Tax Expenditure Plan amendments.

SECTION 1. TITLE.

This ordinance shall be known as the "Extension of SMART existing one-quarter of one cent (¼-cent) of one cent Retail Transaction and Use Tax Extension Ordinance". The Sonoma-Marin Area Rail Transit District hereinafter shall be called "District." This ordinance shall be applicable in the incorporated and unincorporated territory of the Counties of Sonoma and Marin, which shall be referred to herein as "District."

SECTION 2. OPERATIVE DATE/ADOPTION

"Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the effective date of this ordinance, as set forth below.

Continuation of retail transactions and use tax: This Ordinance will extend and renew the retail transaction and use tax (Measure Q) at the same rate of one-quarter of one cent (¼-cent) within Sonoma and Marin County immediately upon the expiration of the Tax imposed by Ordinance No. 2008-01 of the Sonoma-Marin Area Rail Transit District (Measure Q). There shall be no concurrent assessment of the existing tax and the tax to be imposed pursuant to this Ordinance. Nothing in this ordinance is intended to modify, repeal, or alter ordinance 2008-01 previously adopted by the District other than to amend and extend the period of collection for an additional 30-years.

SECTION 3. PURPOSE.

This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

- A. To maintain a local funding source for the design, construction, implementation, operation, financing, maintenance and management of a passenger railroad transportation system and a

- bicycle/pedestrian pathways connecting stations.
- B. To impose and extend a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 105115 of the Public Utilities Code which authorizes the District to adopt this tax ordinance which shall be operative if a two-thirds majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.
 - C. To adopt a retail transaction and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.
 - D. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefor that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.
 - E. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

SECTION 4. CONTRACT WITH STATE.

District shall contract with the California Department of Tax and Fee Administration CDTFA to perform all functions incident to the administration and operation of this transactions and use tax.

SECTION 5. TRANSACTIONS TAX RATE.

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated and unincorporated territory of the District at the rate of one-quarter of one percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date. This shall extend the tax to be imposed for an additional period of thirty years.

SECTION 6. PLACE OF SALE.

For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the state or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the California Department of Tax and Fee Administration.

SECTION 7. USE TAX RATE.

An excise tax is hereby imposed on the storage, use or other consumption in the District of tangible personal property purchased from any retailer on and after the operative tax date for storage, use or other consumption in said territory at the rate of one-quarter of one percent ~~one-quarter of 1 percent~~ of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made. This shall extend the tax to be imposed for an additional period of thirty years.

SECTION 8. ADOPTION OF PROVISIONS OF STATE LAW.

Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

SECTION 9. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES.

In adopting the provisions of Part I of Division 2 of the Revenue and Taxation Code, wherever the State of California is named or referred to as the taxing agency, the name of District shall be substituted therefore. The substitution, however, shall not be made when the word State is used as part of the title of the State Controller, State Treasurer, State Board of Control, California Department of Tax and Fee Administration, State Treasury, or the Constitution of the State of California if the substitution would require action to be taken by or against the Authority or any agency, officer, or employee thereof rather than by or against the CDTFA, as successor to the State Board of Equalization, in performing the functions incident to the administration or operation of this ordinance. The substitution shall not be made in those sections, including, but not necessarily limited to, sections referring to the exterior borders of the State of California, where the result of the substitution would be to provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use, or other consumption remains subject to tax by the state under the said provisions of that code. The substitution shall not be made in Sections 6701, 6702, (except in the last sentence thereof), 6711, 6715, 6737, 6797, or 6828 of the Revenue and Taxation Code. The name of the District shall be substituted for the word "state" in the phrase "retailer engaged in business in this state" in Section 6203 and in the definition of that phrase in Section 6203. A retailer engaged in business in the District shall not be required to collect use tax from the purchaser of tangible personal property unless the retailer ships or delivers the property into the District or participates within the District in making the sale of the property, including, but not limited to soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the District or through any representative, agent, canvasser, solicitor, subsidiary, or person in the District under authority of the retailer. "A retailer engaged in business in the District" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Chapter 2 of Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the District.

SECTION 10. PERMIT NOT REQUIRED.

If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this Ordinance.

SECTION 11. EXEMPTIONS AND EXCLUSIONS, AND CREDITS.

- A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley- Bums Uniform Local Sales and Use Tax Law or the amount of any state- administered transactions or use tax.
- B. There are exempted from the computation of the amount of transactions tax the gross receipts from:
 1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the County in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.
 2. Sales of property to be used outside the District which is shipped to a point outside the District, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the District shall be satisfied:
 - a) With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-District address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and
 - b) With respect to commercial vehicles, by registration to a place of business out-of-District and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.
 3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.
 4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
- C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this District of tangible personal property:
 1. The gross receipts from the sale of which have been subject to a transactions tax under any state administered transactions and use tax ordinance.
 2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.
 3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.
 4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.
 5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
 6. Except as provided in subparagraph (7), a retailer engaged in business in the District shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the District or participates within the District in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the district or through any representative, agent, canvasser, solicitor, subsidiary, or person in the District under the authority of the retailer.
 7. "A retailer engaged in business in the District" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the District.

- D. Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

SECTION 12. AMENDMENTS.

All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

SECTION 13. ENJOINING COLLECTION FORBIDDEN.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the District, or against any officer of the State or the District, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

SECTION 14. ANNUAL APPROPRIATIONS LIMIT.

Taking into account the proceeds of taxes available to the District, including tax revenue that would become available upon approval of this ordinance, the appropriations limit of the Sonoma-Marin Area Rail Transit District for fiscal year 2019-2020 was established at \$142,288,336 million, unless that amount should be amended pursuant to applicable law.

SECTION 15. ADOPTION OF EXPENDITURE PLAN AND ACCOUNTABILITY FOR EXPENDITURE OF PROCEEDS OF THE TAX.

The District Board of Directors hereby adopts the Expenditure Plan attached hereto and incorporated into this ordinance by reference. Proceeds of the tax imposed by this ordinance shall be spent on uses set forth in the Expenditure Plan, including; operation, design, construction, financing, maintenance and management of the rail system and bicycle/pedestrian pathway. The District may propose and amend the expenditure Plan to provide for the use of additional federal, state and local funds, to account for unexpected revenues, to add or delete a project or program or to take into consideration unforeseen circumstances.

SECTION 16. ANNUAL REPORT.

The Chief Financial Officer of the Sonoma-Marin Area Rail Transit District shall annually cause to be prepared a report setting forth the amount of funds collected and expended; and the status of operations and any use authorized to be funded in the Expenditure Plan adopted by the District.

SECTION 17. COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).

Pursuant to the State CEQA Guidelines section 15378(b)(4), adoption of this retail transactions and use tax ordinance as a government funding mechanism is not a project subject to the requirements of CEQA. Pursuant to State CEQA Guidelines section 15276, CEQA does not apply to the expenditure plan. This ordinance creates a government funding mechanism that does not involve a commitment to a specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax is used for a purpose that has such effect, the District will have reviewed or would undertake the required environmental review prior to that particular project implementation.

SECTION 18. SEVERABILITY.

If any terms, provision or portions of this ordinance or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of the ordinance or portions of this ordinance and the application of such provision to other persons or circumstances shall not be affected thereby and remain in full force and effect unless amended or modified by the District.

SECTION 19. PROPOSITION

There shall be proposed to the voters of Sonoma and Marin Counties the following proposition:

To continue relieving traffic congestion, reducing greenhouse gas emissions (having carried 1.5-million passengers by providing quality transportation alternatives to Highway 101), connecting stations with pathways, expanding rail service to Healdsburg/Cloverdale as grants become available, shall an extension of the existing Sonoma-Marin Area Rail Transit District 1/4-cent voter approved sales tax, at the same rate, generating approximately \$40,000,000 annually for an additional 30 years, subject to audits and citizens' oversight, that the State cannot take away, be adopted?

SECTION 20. EFFECTIVE DATE AND POSTING.

This ordinance shall be, and is hereby declared to be, in full force and effect at the close of the polls on the day of election at which the proposition is adopted by two-thirds vote of the electors voting on the measure. Although this ordinance shall be deemed to be effective once adopted by two-thirds vote of the electors voting, the new term and related tax and fiscal provisions of this ordinance shall not be in effect until April 1, 2029, except as modified below in the case of new bond issuance. To the extent that the District may desire prior to April 1, 2029 to issue bonds secured by future revenues from the extension of the tax provisions adopted herein, the provisions of this ordinance shall be operative at said earlier date for application to said revenues and bonds, allocations of any funds derived from said bonds, development of guidelines for use of said bond revenues, administration of the Expenditure Plan adopted hereunder. A summary of the Ordinance shall be posted within 15 days after its passage in a prominent location at the District Office with the names of the Directors voting for and against same.

SECTION 21. TERMINATION DATE.

The authority to levy the tax imposed by this ordinance shall expire on April 1, 2059.

PASSED AND ADOPTED by the Board of Directors of the Sonoma-Marin Area Rail Transit District on November ____, 2019 by the following vote:

DIRECTORS:

AYES:

NOES

ABSENT

ABSTAIN

Gary Phillips, Chair Board of Directors
Sonoma-Marin Area Rail Transit District

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



November 6, 2019

Gary Phillips, Chair
Transportation Authority of Marin

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

Judy Arnold
Marin County Board of Supervisors

Damon Connolly
Marin County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Joe Naujokas
Sonoma County Mayors' and
Councilmembers Association

David Rabbitt
Sonoma County Board of Supervisors

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Shirlee Zane
Sonoma County Board of Supervisors

Farhad Mansourian
General Manager

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Suite 200
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Phone: 707-794-3330
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www.sonomamarintrain.org

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

Petaluma, CA 94954

SUBJECT: The Resolution calling for and providing for a special election and requesting the consolidation of such special election with the statewide election to be held on March 3, 2020 for the purpose of submitting to the voters of Sonoma and Marin Counties a measure seeking authorization to extend the existing one-quarter of one cent (1/4-cent) retail transaction and use tax

Dear Board Members:

RECOMMENDATION:

1. Adopt Resolution No. 2019-18 calling and providing for a special election and requesting the consolidation of such special election with the statewide election to be held on March 3, 2020 seeking authorization to extend the existing one-quarter of one cent retail transactions and use tax and requesting the Sonoma and Marin Counties Board of Supervisors to consolidate and place the measure on the March 3, 2020 statewide election.
2. Direct the Clerk of the SMART Board to provide a certified copy of Ordinance No. 2019-01, Expenditure Plan and the 75-word ballot summary to be submitted to the Sonoma and Marin Counties Registrar of Voters no later than December 6, 2019.

SUMMARY

On October 16, 2019, your Board of Directors unanimously approved the Expenditure Plan. On November 6, 2019, your Board approved Ordinance No. 2019-01 Extension of the Sonoma-Marin Area Rail Transit District's One-Quarter of One Cent Retail Transaction and Use Tax. Upon the affirmative vote of a majority of the directors, your Board may by resolution submit to the voters of the District the measure proposing the extension of the existing retail transaction and use tax ordinance in accordance with the provisions of the Revenue and Taxation Code.

Very truly yours,
[Signature]
 Farhad Mansourian
 General Manager

Attachment(s): Resolution No. 2019-18

**Sonoma-Marin Area Rail Transit District
Resolution No. 2019-18
November 6, 2019**

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT, CALLING AND PROVIDING FOR A SPECIAL ELECTION AND REQUESTING THE CONSOLIDATION OF SUCH SPECIAL ELECTION WITH THE STATEWIDE ELECTION TO BE HELD ON MARCH 3, 2020 FOR THE PURPOSE OF SUBMITTING TO THE VOTERS OF SONOMA AND MARIN COUNTY A MEASURE SEEKING AUTHORIZATION TO EXTEND THE EXISTING ONE-QUARTER OF ONE CENT RETAIL TRANSACTIONS AND USE TAX

WHEREAS, on or about November 6, 2019, the SMART Board of Directors adopted an Ordinance No. 2019-01, subject to voter approval, for a one-quarter of one cent (1/4-cent) retail transactions and use tax ("the Sales Tax Ordinance"),

WHEREAS, the Sales Tax Ordinance references the Expenditure Plan which was adopted unanimously on October 16, 2019 ("the Expenditure Plan") as an attachment to the Ordinance No. 2019-01;

WHEREAS, pursuant to its authority under Public Utilities Code section 105115, the SMART Board of Directors desires by this Resolution to submit the Sales Tax Ordinance to the voters of the District;

NOW, BE IT THEREFORE RESOLVED, THAT:

1. The SMART Board of Directors, pursuant to Public Utilities Code Section 105115, hereby calls a special election for March 3, 2020, on the Sales Tax Ordinance, which proposes to extend the existing one-quarter of one cent (1/4-cent) retail transactions and use tax for an additional 30 years.
2. The Board of Supervisors for Sonoma and Marin Counties are hereby requested to consolidate this election with the statewide election and any other elections to be held within the Counties of Sonoma and Marin on March 3, 2020, and that it include in its proclamation or notice of the special election that Article 3 of Chapter 2 of Division 9 of the Elections Code relating to arguments concerning County measure applies, and that the office of the County Counsel is requested and directed to prepare an impartial analysis.
3. SMART acknowledges that the consolidated election will be held and conducted in the manner prescribed in the Elections Code.
4. The Registrar of Voters for Sonoma and Marin Counties are requested to render all service specified by the Elections Code relating to, connected with, and incidental to the election which shall be regulated and performed in accordance with the provisions of law regulating the statewide election, for which services SMART agrees to reimburse the Counties.

Sonoma-Marin Area Rail Transit District

Resolution No. 2019-18

November 6, 2019

5. The Clerk of the SMART Board is hereby directed to file certified copies of this Resolution with the Sonoma and Marin County Board of Supervisors and to submit certified copies of Ordinance No. 2019-01 and Expenditure Plan to the County Clerk and to the Registrar of Voters of the County of Sonoma and Marin no later than 88 days prior to the date of the election.
6. The ballot measure shall be submitted to the voters of Sonoma and Marin Counties in substantially the following form:

To continue relieving traffic congestion, reducing greenhouse gas emissions (having carried 1.5-million passengers by providing quality transportation alternatives to Highway 101), connecting stations with pathways, expanding rail service to Healdsburg/Cloverdale as grants become available, shall an extension of the existing Sonoma-Marin Area Rail Transit District 1/4-cent voter approved sales tax, at the same rate, generating approximately \$40,000,000 annually for an additional 30 years, subject to audits and citizens' oversight, that the State cannot take away, be adopted?

YES NO

7. The SMART District shall prepare an argument in favor of the ballot measure.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marin Area Rail Transit District held on the _____, day of November 2019, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

Gary Phillips, 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



November 6, 2019

Gary Phillips, Chair
Transportation Authority of Marin

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

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5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

SUBJECT: Award of Contract No. CV-DB-18-001 to Stacy and Witbeck, Inc. for the Construction of the Windsor Extension Project

Dear Board Members:

RECOMMENDATION:

Approve Resolution No. 2019-20 authorizing:

1. The Chair of the Board to execute Design Build Contract No. CV-DB-18-001 with Stacy and Witbeck, Inc. for an amount of \$47,725,888 for the design and construction of general engineering improvements consisting of track, bridge, station, bicycle and pedestrian pathway, electrical and communication infrastructure and other related improvements.
2. The General Manager is hereby authorized, to undertake the following actions for the purpose of finalizing the Contract with Contractor:
 - (a) Finalize the proposed Contract with Contractor in a manner consistent with the staff report presented to the Board;
 - (b) Designate a five (5) percent contingency of the contract amount from the Project Budget to serve as contingency for unanticipated costs.
 - (c) Issue a Limited Notice-to-Proceed for Contract CV-DB-18-001 of not more than \$16,500,000 until the Metropolitan Transportation Commission (MTC) Regional Measure 3 (RM-3) funding has been allocated to the Project, and once RM-3 funds have been released, issue an additional Notice to Proceed.
 - (d) Budget the contract in the amount of \$47,725,888, plus set aside a 5% contingency amount (Total Project Budget).
 - (e) To execute reimbursement funding agreements with the County of Sonoma and the Town of Windsor for their work in the Project.

Background: SMART is advancing the Windsor Extension Project – a 3.1-mile extension of the SMART passenger rail and pathway system to Windsor. The overall Project is funded through federal, regional and state funding.

This 3.1-mile route was used for freight service in the past and is not in a condition to support high-speed passenger service. The project requires railway improvements consisting of reconstructing the track, constructing sections of double track (passing sidings), building a station platform, reconstructing at-grade crossings, replacing five bridges, constructing a bicycle and pedestrian pathway, installing train signaling and communications systems which is currently dark territory (no signaling system).

This Contract will complement the Train Control and Signaling Contract that your Board awarded in September 2018 in the amount of \$15,687,733 for the train signaling, Positive Train Control (PTC), grade crossing control systems, and communications system for the Windsor Extension.

Contract Scope of Work: The proposed contract will design and construct the “backbone” of the passenger rail system – track, bridges, one station, grade crossings, a passing siding, bicycle and pedestrian pathway, and underground communication and power duct banks and contains the following major work elements:

Trackwork: Trackwork will include constructing new track between Airport Boulevard and the downtown Windsor at a new passenger station just north of Windsor River Road. Included in the new track construction is the addition of a northern track exit from the SMART Rail Operations Center (ROC) and one sections of double track from the ROC to Shiloh Road. The second track out of the ROC will provide much needed flexibility for moving and staging trains.

Trestle Bridges: The Project will replace five bridges over Windsor Creek, East Windsor Creek, Pool Creek, an un-named drainage channel, and Airport Creek. These are all old wooden trestle bridges that are essentially at the end of their useful lives. They have been reinforced and shored-up over the years to keep them in service for slower freight trains. They are not in shape to support frequent high speed passenger trains as providing for future freight service.

At-Grade Road Crossings: The Project will reconstruct five at-grade crossing: 1) Airport Boulevard; 2) Aviation Boulevard; 3) Shiloh Road; 4) Mitchell Road; and 5) Windsor River Road. Roadway surfaces and path of travel at each crossing will be upgraded. All at-grade crossings will be designed and approved, in coordination with local municipalities and in compliance with Federal Railroad Administration (FRA) and California Public Utilities Commission (CPUC) requirements.

Windsor Station: The Windsor Station will consist a center platform that will extend the full length (three-car train: 270 feet) of the passenger boarding area. The station will be similar to our existing stations and equipped with a shelter, lighting, and other amenities such as signage, schedules, bike lockers, information kiosks, and a ticket vending machine. One parking lot will be constructed on the south west side of the Windsor River Road intersection that will provide approximately 50 spaces. This will complement the historical depot that was built by the Town of Windsor in 2008.

Pathway: A combination of this contract and the Town of Windsor's round-about project completes the pathway from Airport Blvd to the intersection on the southside of the Station.

Power and Communication Infrastructure: The contract provides for the installation of the underground power and communications duct bank system. This will include providing the infrastructure for power to the station, at-grade crossings for warning device equipment, signal houses, lighting, and other power needs. The separate Train control and Communications contract will install equipment, make connections and get the systems up and running.

Work for Others: Throughout the construction of the SMART passenger rail system, SMART has constructed work for many of our local municipal partners in order to take advantage of our construction activities. In the Initial Operating Segment, we installed utilities for the Las Gallinas Sanitation District and the City of Santa Rosa. In the Larkspur Extension Project, we installed utilities for the San Rafael Sanitation District, constructed pathway for the City of San Rafael and completed construction of the new downtown station for the City of Novato. In the Windsor Extension Project, we are partnering with the County of Sonoma and the Town of Windsor.

Airport Boulevard Widening: The County of Sonoma has requested that SMART include work in the contract to widen Airport Boulevard between Aviation Boulevard and Regional Parkway. This work makes a lot of sense since it will incorporate the track reconstruction across Airport Boulevard into the roadway work. Crossing warning devices, crossing panels and sidewalks will be placed with respect to the roadway widening so as to avoid rework when the County completes the widening of Airport Boulevard. The work includes constructing a new pedestrian crosswalk across Airport Boulevard to access the SMART station. The County is funding this work at a cost of \$4,210,000.

Windsor Pathway Undercrossing: The Town of Windsor is coordinating the pathway between Bell Road and Windsor River Road. They are constructing a portion of as part of the Windsor River Road intersection improvement project and have secured a funding commitment from an adjacent developer for a portion of the pathway. They have asked that SMART install a passageway beneath the track in this area in order to provide for a future east-west pathway connection. The Town is funding the installation of the undercrossing box at a cost of \$300,000.

The Solicitation Process: Section 105074 of the Public Utilities Code and Section 22160 et seq. of the Public Contract Code authorize the Sonoma-Marin Transit District (SMART) to enter into a design build contracts. The prequalification step requires proposers to submit their team of representatives and subcontractors, demonstrate past experience with similar projects, provide claims history and other aspects of their proposed team. The State allows the selection process to follow a best value selection approach. The best value process considers such factors as price, technical expertise, life cycle cost, safety record, skilled labor availability and specific approach to the project.

Once a prequalified list is established, a Request for Proposals is issued to the proposers, inviting them to submit a technical and price proposal for the work. The proposal evaluation can include discussions with proposers, interviews, and another round of price proposals.

This Contract utilizes a design-build delivery method in which the Contractor completes the engineering design and constructs the work providing a single entity for the work. The advantages of the design-build delivery method can include faster project delivery, cost savings due to the engineer and contractor jointly collaborating on design solutions, and greater certainty in final price due to reduced claim potential since the engineer and contractor are a single contract entity.

We conducted a solicitation process for this Contract that followed the requirements of the State of California and standard industry practices. The process is summarized as follows:

- October 26, 2018: SMART issued the Request for Qualification (RFQ)
- November 8, 2018: SMART hosted an Industry Information Meeting for the Contract
- December 21, 2018: SMART received Statements of Qualifications from three (3) Potential Design Build Entities
- May 7, 2019: SMART qualified three (3) teams
- June 4, 2019: SMART issued a Request for Proposal (RFP) to the pre-qualified teams
- June 12, 2019: SMART hosted a Pre-Proposal Conference and Site Walk
- August 7, 2019: SMART received three (3) proposals
- August 28, 2019: SMART requested Best and Final Offer Price Proposals
- September through October, 2019: Contract negotiations
- October 30, 2019: SMART issued Notice of Intent to Award

We received proposals from three (3) qualified proposers: 1) AECOM Energy and Construction Company, Inc. based in Suisun City; 2) Proven Management, Inc. based in Oakland; and 3) Stacy and Witbeck, Inc. based in Alameda. A Technical Evaluation Committee, which consisted of representatives from SMART, the Town of Windsor, and the County of Sonoma, evaluated the technical proposals for responsiveness, experience, understanding of the work, design and management teams, approach to the project, and other relevant evaluation criteria. Stacy and Witbeck scored the highest for the technical approach.

SMART then reviewed the price proposals submitted by each proposer. They were:

- 1) Proven Management, Inc.: \$75,841,677
- 2) AECOM Energy and Construction Company: \$67,047,900
- 3) Stacy and Witbeck, Inc.: \$55,888,113

Staff initiated negotiations with Stacy and Witbeck, Inc. (SW) since they ranked the highest in the technical approach and submitted the lowest price proposal and spent the months of September and October clarifying the scope of work in the contract, and negotiating pricing. We started by reviewing the scope of both the SMART work and that of our partners. We implemented value engineering techniques in combination with some reduction in work scope, such as reducing the limits of the Airport Boulevard widening and eliminating improvements to SMART's Airport Boulevard parking lot. We looked for opportunities for economies of scale and areas where the contractor had accounted for uncertainties. The General Manager participated in negotiations and was quite effective in improving the pricing. Ultimately, we were able to reduce the cost of our work by 5.9%. A summary of the negotiations is as follows:

| | |
|-------------------------------------|----------------|
| ▪ Initial price: | \$ 55,888,113 |
| ▪ Work for others (not SMART cost): | (\$ 9,972,000) |
| ▪ SMART Project Cost: | \$ 45,916,113 |
| ▪ First Round of Negotiations: | \$ 44,855,888 |

| | |
|---|-------------------------------------|
| ▪ Scope refinement, further negotiations: | \$ 43,215,888 (final cost to SMART) |
| ▪ Airport Widening work: | \$ 4,210,000 (Sonoma County) |
| ▪ Windsor Pathway Undercrossing | \$ 300,000 (Windsor) |
| TOTAL CONTRACT VALUE | \$ 47,725,888 |

Funding: SMART has received committed funding of \$65,000,000 for the Project. It includes the following funding amounts and funding sources.

| FUNDING SOURCE | AMOUNT |
|--|----------------------|
| Metropolitan Transportation Commission (MTC) - RM3 | \$ 40,000,000 |
| Federal Railroad Administration (FRA) - PTC Grant | \$ 5,000,000 |
| State Funding - Transit & Intercity Rail Capital Program (TIRCP) | \$ 20,000,000 |
| TOTAL | \$ 65,000,000 |

Funding has been committed by the State of California and the Federal Railroad Administration (FRA) through obligations and executed grant agreements. The Metropolitan Transit Commission (MTC) committed \$40 million as part of the Regional Measure 3 (RM3) program. The RM3 funding is currently being held in escrow while lawsuits are being resolved. Thus, SMART has not yet received the \$40M in RM3 funding for the Project.

At this juncture, there are two options to implement the Windsor Extension Project:

1. Cancel the solicitation and start anew when the RM3 funding is allocated after MTC resolves the legal challenges. In this option, it is very likely that we would receive much higher pricing with a new solicitation based upon the range of pricing that we received in this initial procurement. Higher prices would strain the budget and likely require additional funding to complete the Project.
2. Take advantage of the favorable pricing that we have negotiated and award the contract and issue a limited notice-to-proceed for design and the procurement of long lead items (rail, rail components, concrete ties, and precast bridge elements). This would prepare us for construction next summer should the RM3 funding be allocated. If the allocation is delayed, we are "shovel ready". As part of our negotiations, the Contractor has agreed to hold their price through February 29, 2020. Should SMART be unable to provide a full notice-to-proceed for the work, the contractor has reserved the right to renegotiate costs for the remaining work to account for lost efficiencies and escalation costs.

Staff is recommending Option 2 to award the contract and issue a limited notice-to-proceed for design and the procurement of long lead items (rail, rail components, concrete ties, and precast bridge elements). In order to maintain the project schedule and more importantly, take advantage of the favorable construction pricing, it is important that we continue to advance the project.

Design work will begin within days of the award of the contract which will allow us to begin construction next year in the summer of 2020. What is especially important with the schedule is to be able to construct the bridges during allowed “in-water” work windows from June through October. Achieving these critical milestones should provide for passenger service in late 2021.

This is a similar process that we followed for the Larkspur Extension when we hadn’t received a funding allocation from the Federal Transit Administration (FTA). To support this approach, we issued a limited-notice-to-proceed while we worked with the FTA to secure two Letters of No Prejudice that made project expenditures retroactively eligible for reimbursement once the funds were allocated. We have done the same with the MTC and received the attached funding eligibility letter on October 9, 2019 verifying that any expenses that we incur are eligible for reimbursement once MTC resolves the legal challenge to the RM3 program.

Value Engineering: As we do in every major project, we analyzed the existing Windsor corridor to develop an appropriate scope of work. We consider such things as condition of existing tracks, new elements, restrictions on replacing work in the future if it is deferred, and of course available funding. As part of the scoping process, we ask ourselves fundamental questions, such as: “Can we use the existing tracks in their current condition?”; “What about operating at a slower speed?”; “Could we replace just some of the deteriorated ties without reconstructing the track structure?”; “Could we simply rehabilitate the existing wooden bridges?”; and other relevant questions. This process has served us well, as we believe we have prudently managed available funding in the projects that we have completed to date: The Initial Operating System and the Larkspur Extension.

We typically reconstruct elements that will be very difficult to do once trains are running since the work has the potential to affect operations and be significantly more expensive since there will be many restrictions on performing the work. This approach to establishing a solid foundation for the railroad minimizes maintenance costs and re-work in the future.

In order to provide context to the discussion about the cost of track reconstruction, we have highlighted a few representative projects for comparison purposes.

- **SMART Initial Operating System:** (Downtown San Rafael to Airport Boulevard in Sonoma County) Cost: \$448M. This 43-mile project rebuilt the existing infrastructure and install current state-of-the-art train control elements, included track reconstruction, a maintenance facility, a train dispatch center, tunnel rehabilitation, a refurbished moveable draw bridge, 18 trains, reconstruction/rehabilitation, fiber optic communications system and Positive Train Control system. This equates to **\$10.4M/mile**.
- **eBART:** a comparable 10.1-mile commuter rail system in the East Bay that runs very similar trains to SMART, opened in 2018 for a cost of **\$52M/mile**.
- **TexRail:** a 27-mile commuter rail system between downtown Fort Worth and Dallas-Fort Worth Airport. Cost \$950M, or **\$35M/mile**.

So, capital costs vary widely from project to project as the settings can be vastly different (rural vs urban), different scopes of work (brand new construction vs. minimal rehabilitation), and the economic climate can greatly affect pricing (was a project bid during an economic downturn or at the height of the economic cycle). Our costs are very competitive on both the national and local levels.

At SMART, we have attempted to find a balance between initial cost and long-term viability. For example, we have opted to replace old metal drainage pipes with new concrete pipes when we reconstruct the track. This is dramatically cheaper when the line is shut down for initial reconstruction than changing it during operation in a small off-hour access window in the middle of the night, not to mention the cost impact if that old rusted metal pipe were to fail in an extreme northern California storm event.

Capital funding is typically much easier to secure than maintenance funding making these capital deferrals very costly in addition to being disruptive. The SMART line in later years before SMART acquired it, received minimal maintenance and often used "hand-me-down" materials. Thus, investing hard earned capital funding into existing worn infrastructure is being irresponsible. For example, replacing every fourth or fifth railroad tie instead of all of the ties, ballast and drainage pipes beneath the rails, relies on the deteriorated condition of the overall track structure and puts a heavy burden on the SMART capital reserve fund in the future. A minimally rehabilitated system would likely not provide the same level of service as the recently opened SMART system.

FISCAL IMPACT: Contract expenditures are included in the FY2019-20 budget.

REVIEWED BY: [] Finance BM [] Counsel JS

Very truly yours,



Bill Gamlen, P.E.
Chief Engineer

Attachment(s):

- 1) Resolution No. 2019-20
- 2) Metropolitan Transportation Commission October 9, 2019 Letter
- 3) Contract No. CV-DB-18-001 with Stacy and Witbeck, Inc.

Resolution No. 2019-20
Sonoma-Marin Area Rail Transit District
November 6, 2019

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT, STATE OF CALIFORNIA, AWARDING THE DESIGN BUILD CONTRACT TO STACY AND WITBECK, INC., FOR THE CONSTRUCTION OF GENERAL ENGINEERING IMPROVEMENTS CONSISTING OF TRACK CONSTRUCTION, RECONSTRUCTING AT-GRADE CROSSINGS, BRIDGE CONSTRUCTION, BRIDGE REHABILITATION, STATION CONSTRUCTION, CONSTRUCTING A BICYCLE AND PEDESTRIAN PATHWAY, ELECTRICAL AND COMMUNICATION INFRASTRUCTURE AND OTHER RELATED IMPROVEMENTS TO SMART'S PASSENGER RAIL SYSTEM FOR THE WINDSOR EXTENSION PROJECT (CONTRACT NO. CV-DB-18-001); AND DELEGATING CERTAIN AUTHORITY TO THE GENERAL MANAGER

WHEREAS, Section 105074 of the Public Utilities Code and Section 22160 et seq. of the Public Contract Code authorize the Sonoma Marin Transit District (SMART) to enter into a design build contracts; and

WHEREAS, SMART is advancing the Windsor Extension Project – a 3.1 -mile extension of the SMART passenger rail system to Windsor; and

WHEREAS, SMART's solicitation process included the following:

SMART issued the Request for Qualification – October 26, 2018

SMART hosted an Industry Information Meeting for this Contract – November 8, 2018

SMART received Statements of Qualifications from three (3) Design Build teams–December 21, 2018

SMART qualified three (3) teams – May 7, 2019

SMART issued the Request for Proposal to the pre-qualified teams – June 4, 2019

SMART hosted a Pre-Proposal Conference and Site Walk-June 12, 2019

SMART received three (3) proposals – August 7, 2019

SMART requested Best and Final Offer Price Proposals – August 28, 2019

SMART issued Notice of Intent to Award – October 30, 2019

WHEREAS, staff negotiated the terms and conditions of the proposed Design Build Contract ("Contract") with Stacy and Witbeck, Inc. ("Contractor") and a copy of the proposed contract is on file with the Clerk; and

WHEREAS, staff will incorporate Contractor's Best and Final Offer and the final negotiated deal points into the proposed contract; and

WHEREAS, once the proposed Contract is finalized and Contractor has provided the required bonds, insurance and escrowed documents, the Contract will be ready for execution.

WHEREAS, the Windsor Extension Project (Contract No. CV-DB-18-001) is funded through regional and state funding; and

Resolution No. 2019-20
Sonoma-Marin Area Rail Transit District
November 6, 2019

WHEREAS, SMART plans to issue a Limited Notice-to-Proceed for Contract No. CV-DB-18-001 of not more than \$16,500,000 until the Metropolitan Transportation Commission (MTC) Regional Measure 3 (RM-3) funding has been allocated to the project; and once RM-3 funding is released, issue an addition Notice to Proceed; and

WHEREAS, as part of the Windsor Extension Project, the Town of Windsor has requested that SMART include construction of an undercrossing structure beneath the tracks south of Windsor River Road to provide for a future path-of-travel from one side of the track to the other and Windsor to be funded by the Town of Windsor, and the County of Sonoma has requested that as part of the Project SMART widen Airport Boulevard between Aviation Boulevard and Regional Parkway to be funded by County; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Sonoma-Marin Area Rail Transit District declares and orders as follows:

1. The findings and determinations set forth herein are true and correct, are supported by substantial evidence in the record and are adopted as set forth herein.

2. The Contract for the Design Build Contract No. CV-DB-18-001 shall be awarded to Stacy and Witbeck, Inc.

3. The General Manager is hereby authorized, to undertake the following actions for the purpose of finalizing the Contract with Contractor:

- (a) Finalize the proposed Contract with Contractor in a manner consistent with the staff report presented to the Board;
- (b) Designate a five (5) percent contingency of the contract amount from the Project Budget to serve as contingency for unanticipated costs.
- (c) Issue a Limited Notice-to-Proceed for Contract CV-DB-18-001 of not more than \$16,500,000 until the Metropolitan Transportation Commission (MTC) Regional Measure 3 (RM-3) funding has been allocated to the Project, and once RM-3 funds have been released, issue an additional Notice to Proceed.
- (d) Budget the contract in the amount of \$47,725,888, plus set aside a 5% contingency amount (Total Project Budget).
- (e) To execute reimbursement funding agreements with the County of Sonoma and the Town of Windsor for their work in the Project.

Resolution No. 2019-20
Sonoma-Marin Area Rail Transit District
November 6, 2019

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4. The Board authorizes the Chairperson to execute the final contract.
 5. The General Manager and staff are authorized to take all action necessary and appropriate to carry out the Contract. The Clerk of the Board is designated as the custodian of the documents and other materials that constitute the record of the proceedings upon which the Board's decision herein are based. These documents can be found at SMART, 5401 Old Redwood Hwy, Suite 200, Petaluma, CA 94954.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marin Area Rail Transit District held on the 6th day of November, 2019, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

Gary Phillips, 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



METROPOLITAN
TRANSPORTATION
COMMISSION

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Deputy Executive Director, Operations

Brad Paul
Deputy Executive Director,
Local Government Services

October 9, 2019

Mr. Farhad Mansourian
General Manager
Sonoma-Marin Area Rail Transit District
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954-7134

RE: Regional Measure 3 Funding Eligibility for Upcoming Contracts

Dear Mr. Mansourian:

This letter is intended to clarify MTC policy regarding the eligibility of Regional Measure 3 (RM3) funds for contracts awarded prior to the allocation of RM3 funds. As you know, RM3 was approved by voters on June 5, 2018, and on January 1, 2019, the Bay Area Toll Authority implemented the first dollar of the associated toll increase allowed by the measure. Collected revenues are being held in escrow while RM3 remains in litigation. As such, RM3 funds are currently not being allocated to projects.

The RM3 expenditure plan (California Streets and Highways Code, Section 30914.7 (a)) includes the following SMART project description: "*Sonoma-Marin Area Rail Transit District (SMART). Provide funding to extend the rail system north of the Charles M. Schulz-Sonoma County Airport to the Cities of Windsor and Healdsburg. The project sponsor is the Sonoma-Marin Area Rail Transit District. Forty million dollars (\$40,000,000).*" As we understand, SMART anticipates awarding a contract this month for track, stations, and other infrastructure for the SMART Windsor Extension and intends to request RM3 funds, if available, for a significant portion of the contract.

Awarding a contract for the project described above prior to receiving an allocation of RM3 funds will not preclude future expenses under the contract from eligibility for reimbursement with RM3 funds following an allocation. However, SMART proceeds at its own risk, and further Commission action will be required to establish a specific scope of work that is eligible for reimbursement with RM3 funds, if RM3 funds become available for allocation. Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in blue ink that reads "Therese W. McMillan".

Therese W. McMillan
Executive Director

TM: CB

J:\PROJECT\RM3\Implementation Planning\RM3 Eligibility Letters\MTC to SMART Letter Oct 2019 re RM3 Funds Eligibility.docx

CONTRACT No. CV-DB-18-001

THIS DESIGN-BUILD CONTRACT No. CV-DB-18-001 is made and entered into this
day of _____, 2019 (the "Contract"), between the SONOMA-MARIN AREA
RAIL TRANSIT DISTRICT (the "District") and STACY AND WITBECK, INC.,

- A corporation organized and existing under the laws of the State of _____,
- A partnership, whose general partners are _____,
- A joint venture, whose members are: _____,

the location of whose principal office is (hereinafter referred to as the "Contractor"), with reference to the definitions of terms set forth in General Conditions Article GC 1.3 and the following facts:

RECITALS

A. On June 4, 2019, the District issued a Request for Proposals (RFP) for design and construction of the Windsor Extension Project (the "Project"), pursuant to procurement authority granted in the Public Contract Code Sections 22160 et seq.

B. The District's goals for the Project as stated in the RFP include: (1) satisfying its standards for design, construction, environmental sensitivity, maintainability, operability and life cycle; (2) providing opportunity on the Project for Disadvantaged Business Enterprises (DBE), including small businesses; (3) developing the system in accordance with the established schedule; (4) obtaining best value that is within SMART's budget and desire to minimize cost; and (5) satisfying the District's commitments to stakeholders including operating freight railroad.

C. The Contract Drawings and Contract Specifications set forth preliminary design concepts for the Project and serve to provide certain baseline requirements for the Project. These documents are preliminary in nature, and the Proposers were advised that the Contractor would be required to assume full responsibility and liability with respect to design of the Project in accordance with the requirements of the Contract Documents, including correction of any errors in the Contract Drawings and Contract Specifications.

D. The Contract Documents include provisions intended to allow the District's goals for the Project to be achieved and to reflect the Contractor's assumption of responsibility, risk, and liability for design of the Project, and a requirement to pay Liquidated Damages in the event of unexcused delay in completion. The RFP required the Proposers to account for such restrictions and requirements in determining the proposed Contract Price.

E. The District evaluated proposals in response to the RFP, and has selected the Contractor for award of the Contract based on a determination that its Proposal provided the best value to the District, considering the technical and price factors set forth in the RFP.

STACY AND WITBECK, INC.
AGREEMENT
CV-DB-18-001

Page 1 of 50

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

ARTICLE 1 CONTRACT DOCUMENTS.

Certain Definitions. Refer to General Conditions Article GC 1.2 and GC 1.3 for the meaning of various terms used in the Contract Documents.

Contract Documents. The Contract Documents are initially comprised of the following documents:

| CONTRACT DOCUMENTS |
|--|
| Design-Build Contract (including Attachments A through F) |
| CD-2: Supplemental Conditions for Contract CV-DB-18-001 |
| CD-3: General Conditions for Contract CV-DB-18-001 |
| CD-4: Program Requirements for Contract CV-DB-18-001 |
| CD-5: General Requirements for Contract CV-DB-18-001 |
| CD-6: SMART 2019 Design Criteria Manual – Issued June 4, 2019 |
| BD-01: Baseline Documents identified in the RFP CV-DB-18-001 |
| All Reference Documents identified in the RFP CV-DB-18-001 |
| Addendums Issued for Contract CV-DB-18-001 |
| Construction Specifications, excluding any deviations from the requirements of the other Contract Documents contained therein which have not been specifically approved in writing as such by SMART. |
| Construction Drawings, excluding any deviations from the requirements of the other Contract Documents contained therein which have not been specifically approved in writing as such by SMART. |
| Contractor's Proposal, to the extent it meets or exceeds the requirements of the other Contract Documents. |

The Contract Documents will also include: one or more Notice(s) to Proceed (NTP) and any supplemental agreements, amendments, Change Orders and Contract Modifications.

Interpretation of Contract Documents. Cross references to any articles of the General Conditions shall be deemed to mean reference to the General Conditions as modified and supplemented by the Supplemental Conditions.

STACY AND WITBECK, INC.
AGREEMENT
CV-DB-18-001

Page 2 of 50

ARTICLE 2 SCOPE OF WORK.

In consideration of the payments and agreements hereinafter set forth to be made and performed by the District and the Contractor, and under conditions expressed in the bond(s) of even date herewith and attached hereto, the Contractor agrees with the District to do all the work and furnish all the materials (except those materials expressly stated in the Contract Documents to be furnished by the District) necessary for the completion of the Project (the “Work”). The Contractor shall perform the Work in a good, workmanlike and substantial; manner and to the satisfaction of the District in accordance with the Contract Documents attached hereto.

A general description of the scope of the Work is set forth in Program Requirements Article PR 1.

ARTICLE 3 CONTRACT TIME

Notice To Proceed. The Contractor shall begin the Work as specified in, and on the date set forth in one or more Notices to Proceed issued by the District. See General Conditions Article GC 8.1 and Supplemental Conditions Article SC 8.1.

Milestone Deadlines. The Contractor shall diligently prosecute the Work so as to achieve completion on or before the dates specified in General Conditions Article GC 8.4.1, as such dates may be extended in accordance with the Contract Documents:

Time Extensions. No extension of any Milestone Deadline shall be effective unless in writing signed by the District. See General Conditions Article GC 8.4 for more information regarding time extensions. Any extension shall be for such time and terms and conditions as shall be fixed by the District.

ARTICLE 4 COMPENSATION.

Contract Amount. As full compensation for the Work, the District will pay the Contractor the lump sum amounts specified in Attachment A hereto, and amounts for Provisional Sum Work not to exceed the amounts specified in Attachment A hereto, as such amounts may be adjusted under the terms and conditions of the Contract Documents. The total amount so payable is referred to herein as the “Contract Price.”

ARTICLE 5 EXAMINATION OF DOCUMENTS AND SITE.

The Contractor warrants that, before submitting its Proposal, it carefully examined the Contract Documents together with the site of the proposed Work and its surrounding territory and is informed regarding all of the conditions affecting the Work to be done and labor and materials to be furnished for the completion of this Contract, including the existence of poles, wires, pipes, and other facilities and structures of municipal and other public service corporations on, over, or under the site, except latent conditions that constitute Differing Site Conditions under the terms of the Contract Documents, and that its information was secured by personal and other investigation and research. See Program Requirements Article PR 5.1.3 for more information regarding the Contractor’s Pre-Proposal site examination and General Conditions Article GC 4.6 for information on Differing Site Conditions.

ARTICLE 6 ALTERATIONS AND OMISSIONS.

The Work identified in the Contract Documents shall be performed in accordance with the true intent and meaning of the Contract Documents without any further expense of any nature whatsoever to the District other than the consideration named in this Contract.

The District reserves the right, at any time during the progress of the Work, to alter the scope of Work, or omit any portion of the Work as it may deem reasonably necessary for the public interest, making allowances for additions and deductions with compensation made in accordance with the Contract Documents for the altered or omitted Work, in accordance with General Conditions Article GC 4.2.

ARTICLE 7 PAYMENTS.

As the Work progresses in accordance with this Contract and in a manner that is satisfactory to the District, the District will make payments to the Contractor for Work completed in accordance with General Conditions Article GC 9.

If the Contractor does not comply with any direction concerning the Work or materials given by the District's Authorized Representative, the Contractor shall not be entitled to have any payment made for the non-complying Work. *See* General Conditions Article GC 5.12 regarding nonconforming Work.

ARTICLE 8 DBE COMMITMENT GOAL.

This Contract is subject to certain requirements concerning utilization of DBEs. It is the District's intent that DBEs have the maximum practicable opportunity to participate in the Contract. The Contractor must comply with the DBE commitments and demonstrate good faith efforts to achieve the 4.4% DBE goal for this contract included in its Proposal, as it may be modified during the course of this Contract.

The Contractor agrees to:

- A. Carry out the award of Subcontracts to DBEs to the fullest extent consistent with efficient Contract performance.
- B. Establish procedures to ensure the timely payments of amounts due DBEs pursuant to the terms of the Subcontracts with DBEs.
- C. Cooperate in any studies or surveys as may be conducted by the District as may be necessary to determine the extent of the Contractor's compliance with DBE participation.

ARTICLE 9 PROJECT ORGANIZATION AND CONTACTS.

Attachment B identifies the Engineer and the initial Authorized Representatives of the District and the Contractor. The District shall have the right to change the Engineer, and each party shall have the right to change its Authorized Representative and addresses for notices, upon written notice delivered pursuant to this Article.

All notices and other communications concerning this Contract shall be written in English, shall bear the number assigned to this Contract by the District and shall follow the District's correspondence format and reference system.

Notices and other communications may be (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by facsimile or email communication followed by a hard copy. A notice to the District will be effective only if it is delivered to the District's Authorized Representative and other person(s) designated for delivery of notices in Attachment B hereto, and a notice to Contractor will be effective only if it is delivered to Contractor's Authorized Representative and other person(s) designated for delivery of notices in Attachment B hereto.

Notices shall be deemed delivered when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by telefacsimile after 4:00 p.m. Pacific Standard or Daylight Time (as applicable) and all other notices received after 5:00 p.m. shall be deemed received on the first business day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.). Any technical problem or any failure of any kind preventing Contractor from delivering notice in accordance with the Contract shall be the sole responsibility of Contractor.

Contractor shall copy the District on all written correspondence pertaining to the Contract between Contractor and any Person other than Contractor's Subcontractors, consultants and attorneys.

ARTICLE 10 WORKERS' COMPENSATION CERTIFICATION.

By executing this Contract, the Contractor certifies that it is aware of the provisions in Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the Contractor covenants and agrees to comply with such provisions prior to commencing the performance of the Work of this Contract.

ARTICLE 11 LICENSING.

The Contractor acknowledges that all contractors in California are required by State law to be licensed, and are regulated by the Contractors State License Board, which has jurisdiction to investigate complaints against contractors if a complaint is filed within three years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, 9821 Business Park Drive, Sacramento, CA 95827-1703, mailing address P.O. Box 26000, Sacramento, CA 95826- 0026, Phone (800) 321-CSLB.

ARTICLE 12 INSURANCE.

The Contractor shall maintain in full force and effect liability insurance necessary to cover claims arising from the Contractor's operations under this Agreement, in accordance with Attachment C hereto.

ARTICLE 13 SECURITY INTEREST.

In the event District fails to pay when due any sum owed to Contractor under this Agreement, Contractor shall have a security interest in the proceeds of the transactions and use tax approved by the voters of District in 2008 (the "Measure Q Sales Tax") as necessary to secure the sum due. The security interest created by this paragraph shall be subordinate to (i) any pledge of or grant of a security interest in the proceeds of the Measure Q Sales Tax to secure District's indebtedness or other obligations for borrowed money, whether

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such pledge or grant of security interest is made before or after this Agreement is made and (ii) any security interest created by an agreement for the provision of goods or services to District made before this Agreement is made. The security interest created by this paragraph shall expire on the sooner of satisfaction or extinguishment of District's duty to pay such sum or expiration or termination of this Agreement. It is the intent of District that this Section, having been duly approved by a resolution of District's Board of Directors, constitutes an evidence of indebtedness pursuant to Section 105262 of the Public Utilities Code. Upon expiration of the security interest as specified herein, Contractor shall execute and deliver to District any and all documents necessary to release such security interest.

ARTICLE 15 FURTHER ASSURANCES.

Contractor shall promptly execute and deliver to the District all such instruments and other documents and assurances as are reasonably requested by the District to further evidence the obligations of Contractor hereunder, including assurances regarding assignments of Subcontracts contained herein.

ARTICLE 16 KEY PERSONNEL

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

1. Northern California Area Manager – Dan Elshire
2. Project Manager – Nick Slama
3. Construction Manager / Superintendent – Bob Hintz
4. Principal Engineer (Civil/Rail) – Andy Sokol, PE
5. Architect of Record – Richard Quirk, AIA, NCARB
6. Structures Lead Designer of Record – Richard Campbell, PE
7. Safety Representative – Katie Nance, CHST
8. Quality Control Manager – Nader Hassoun

IN WITNESS WHEREOF, the parties have hereunto executed this Contract as of the date first above written.

DISTRICT:

**SONOMA-MARIN AREA RAIL
TRANSIT DISTRICT**

By: _____
District Board Chairperson

CONTRACTOR:

NAME OF CONTRACTOR

By: _____
Authorized Signer for Contractor

Title: _____

California Contractor's License No. _____

Class A, License Expiration Date: _____

CONTRACT ATTACHMENT INDEX

ATTACHMENT A – Contract Price (Bid Schedule)

ATTACHMENT B – Authorized Representatives; Addresses for Notices

ATTACHMENT C – Insurance

ATTACHMENT D – Subcontracting Plan Requirements

ATTACHMENT E – FTA and DOT Requirements

ATTACHMENT F – DBE Information & Commitment Form

ATTACHMENT G – Scope and Contract Clarifications

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ATTACHMENT A

CONTRACT PRICE

| BID ITEM # | ITEM NAME | QTY | UNI | UNIT COST | EXTENDED COST |
|------------|--|-----|-----|----------------|----------------|
| 1 | Site Preparation Exclusive of Airport Blvd. | 1 | LS | \$3,216,113.00 | \$3,216,113.00 |
| 2.1 | Grading - Railroad | 1 | LS | \$3,725,000.00 | \$3,725,000.00 |
| 2.2 | Track Construction | 1 | LS | \$7,925,000.00 | \$7,925,000.00 |
| 2.3 | Special Trackwork | 1 | LS | \$2,125,000.00 | \$2,125,000.00 |
| 2.4 | Grade Crossing Track | 1 | LS | \$975,000.00 | \$975,000.00 |
| 3 | Right of Way Fencing | 1 | LS | \$1,450,000.00 | \$1,450,000.00 |
| 4 | Culverts and Drainage - Exclusive of Airport Blvd. | 1 | LS | \$2,415,000.00 | \$2,415,000.00 |
| 5.1 | Roadway – Aviation Blvd. | 1 | LS | \$325,000.00 | \$325,000.00 |
| 5.2 | Roadway – Shiloh Rd. | 1 | LS | \$350,000.00 | \$350,000.00 |
| 5.3 | Roadway – Mitchell Ln. | 1 | LS | \$260,000.00 | \$260,000.00 |
| 5.4 | Roadway – Windsor River Rd. | 1 | LS | \$560,000.00 | \$560,000.00 |
| 5.5 | Parking Lot – Airport Station | 1 | LS | \$100,000.00 | \$100,000.00 |
| 5.6 | Parking Lot – Windsor Station | 1 | LS | \$975,000.00 | \$975,000.00 |
| 6.1 | Traffic Signal and Illumination – Roadway - Exclusive of Airport Blvd. | 1 | LS | \$600,000.00 | \$600,000.00 |
| 6.2 | Traffic Signal and Illumination – Parking Lot | 1 | LS | \$250,000.00 | \$250,000.00 |
| 7 | Utilities – Exclusive of Airport Blvd. | 1 | LS | \$75,000.00 | \$75,000.00 |
| 8 | AC Power - Exclusive of Airport Blvd. | 1 | LS | \$300,000.00 | \$300,000.00 |
| 9 | Retaining Walls - Railroad | 1 | LS | \$775,000.00 | \$775,000.00 |
| 10 | Windsor Station | 1 | LS | \$2,150,000.00 | \$2,150,000.00 |
| 11.1 | Railroad Bridge - Airport Creek | 1 | LS | \$925,000.00 | \$925,000.00 |
| 11.2 | Railroad Bridge – Pool Creek | 1 | LS | \$950,000.00 | \$950,000.00 |
| 11.3 | Railroad Bridge – Unnamed Creek | 1 | LS | \$700,000.00 | \$700,000.00 |
| 11.4 | Railroad Bridge – East Windsor Creek | 1 | LS | \$900,000.00 | \$900,000.00 |
| 11.5 | Railroad Bridge – Windsor Creek | 1 | LS | \$900,000.00 | \$900,000.00 |
| 12 | Environmental Compliance and SWPPP - Railroad | 1 | LS | \$425,000.00 | \$425,000.00 |
| 13 | Systems | 1 | LS | \$2,250,000.00 | \$2,250,000.00 |

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| | | | | | |
|------------------------------|--|---|----|------------------------|----------------|
| 14 | Mobilization and Demobilization – Railroad (not more than 5% of bid schedule total) | 1 | LS | \$1,600,000.00 | \$1,600,000.00 |
| 15 | Project Management and Design – Railroad (not more than 12% of bid schedule total) | 1 | LS | \$2,739,775.00 | \$2,739,775.00 |
| 16 | Allowance: Unknown Unsuitable Material - Railroad | 1 | AL | \$100,000.00 | \$100,000.00 |
| 17 | Allowance: Unknown Contaminated Material - Railroad | 1 | AL | \$100,000.00 | \$100,000.00 |
| 18 | Allowance: Unknown Utilities and Obstructions - Railroad | 1 | AL | \$100,000.00 | \$100,000.00 |
| 19 | Airport Blvd Roadway Improvements (Total from Airport Blvd. Improvements (Bid Item: 19)) | 1 | LS | \$4,210,000.00 | \$4,210,000.00 |
| 20 | Non-Motorized Path Improvements South of Station 3210+00 (Total from NMP South of Sta. 3210+00 (Bid Item: 20)) | 1 | LS | \$2,650,000.00 | \$2,650,000.00 |
| 21 | Non-Motorized Path Improvements North of Station 3210+00 (Total from NMP North of Sta. 3210+00 (Bid Item: 21)) | 1 | LS | \$625,000.00 | \$625,000.00 |
| TOTAL CONTRACT PRICE: | | | | \$47,725,888.00 | |

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AIRPORT BLVD ROADWAY IMPROVEMENTS (BID ITEM: 19)

| BID ITEM # | ITEM NAME | QTY | UNI | UNIT COST | EXTENDED COST |
|---|--|-----|-----|--------------|-----------------------|
| A19-1 | Airport Blvd. Site Preparation | 1 | LS | \$625,000.00 | \$625,000.00 |
| A19-2 | Not Used | - | - | - | - |
| A19-3 | Airport Blvd. Fencing and Gates | 1 | LS | \$180,000.00 | \$180,000.00 |
| A19-4 | Airport Blvd. Culverts and Drainage | 1 | LS | \$180,000.00 | \$180,000.00 |
| A19-5.1 | Airport Blvd. Full Depth HMA | 1 | LS | \$750,000.00 | \$750,000.00 |
| A19-5.2 | Airport Blvd. Grind and Overlay HMA | 1 | LS | \$220,000.00 | \$220,000.00 |
| A19-5.3 | Airport Blvd. Bus Turnout | 1 | LS | \$70,000.00 | \$70,000.00 |
| A19-5.4 | Airport Blvd. Sidewalk | 1 | LS | \$145,000.00 | \$145,000.00 |
| A19-5.5 | Airport Blvd. Curb and Gutter | 1 | LS | \$225,000.00 | \$225,000.00 |
| A19-5.6 | Airport Blvd. Commercial Driveway | 1 | LS | \$48,000.00 | \$48,000.00 |
| A19-6 | Airport Blvd. Traffic Signal and Illumination | 1 | LS | \$690,000.00 | \$690,000.00 |
| A19-7 | Airport Blvd. Utilities | 1 | LS | \$100,000.00 | \$100,000.00 |
| A19-8 | Airport Blvd. AC Power | 1 | LS | \$90,000.00 | \$90,000.00 |
| A19-9 – A19-11 | Not Used | - | - | - | - |
| A19-12 | Airport Blvd. Environmental Compliance and SWPPP | 1 | LS | \$52,000.00 | \$52,000.00 |
| A19-13 | Not Used | - | - | - | - |
| A19-14 | Airport Blvd. Mobilization & Demobilization (not more than 5% of bid schedule total) | 1 | LS | \$160,000.00 | \$160,000.00 |
| A19-15 | Airport Blvd. Project Management & Design (not more than 12% of bid schedule total) | 1 | LS | \$375,000.00 | \$375,000.00 |
| A19-16 | Allowance: Airport Blvd. Unknown Unsuitable Material | 1 | AL | \$100,000.00 | \$100,000.00 |
| A19-17 | Allowance: Airport Blvd. Unknown Contaminated Material | 1 | AL | \$100,000.00 | \$100,000.00 |
| A19-18 | Allowance: Airport Blvd. Unknown Utilities and Obstructions | 1 | AL | \$100,000.00 | \$100,000.00 |
| Bid Item 19: Airport Blvd Roadway Improvements | | | | TOTAL | \$4,210,000.00 |

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NON-MOTORIZED PATHWAY (NMP) SOUTH OF STATION 3210+00 (BID)
ITEM: 20

| BID ITEM # | ITEM | QTY | UNIT | UNIT COST | COST |
|--|---|-----|------|---------------|-----------------------|
| B20-1 | Site Preparation – NMP South of Station 3210+00 | 1 | LS | \$125,000.00 | \$125,000.00 |
| B20-2 | Grading and Paving – NMP South of Station 3210+00 | 1 | LS | \$790,000.00 | \$790,000.00 |
| B20-3 | NMP Fencing South of Station 3210+00 | 1 | LS | \$165,000.00 | \$165,000.00 |
| B20-4 Through B20-8 | Not Used | - | - | - | - |
| B20-9.1 | Retaining Walls – NMP South of Station 3210+00 | 1 | LS | \$600,000.00 | \$600,000.00 |
| B20-9.2 | Not Used | - | - | - | - |
| B20-10 | Not Used | - | - | - | - |
| B20-11.1 | NMP Bridge – Airport Creek | 1 | LS | \$250,000.00 | \$250,000.00 |
| B20-11.2 | NMP Bridge – Pool Creek | 1 | LS | \$280,000.00 | \$280,000.00 |
| B20-12 | Environmental Compliance and SWPPP – NMP South of Station 3210+00 | 1 | LS | \$25,000.00 | \$25,000.00 |
| B20-13 | Not Used | - | - | - | - |
| B20-14 | Mobilization and Demobilization – NMP South of Station 3210+00 (not more than 5% of bid schedule total) | 1 | LS | \$100,000.00 | \$100,000.00 |
| B20-15 | Project Management and Design – NMP South of Station 3210+00 (not more than 12% of bid schedule total) | 1 | LS | \$240,000.00 | \$240,000.00 |
| B20-16 | Allowance: Unknown Unsuitable Material – NMP South of Station 3210+00 | 1 | AL | \$25,000.00 | \$25,000.00 |
| B20-17 | Allowance: Unknown Contaminated Material – NMP South of 3210+00 | 1 | AL | \$25,000.00 | \$25,000.00 |
| B20-18 | Allowance: Unknown Utilities and Obstructions – NMP South of Station 3210+00 | 1 | AL | \$25,000.00 | \$25,000.00 |
| Bid Item 20: Non-Motorized Pathway South of Station 3210+00 | | | | TOTAL: | \$2,650,000.00 |

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NON-MOTORIZED PATHWAY (NMP) NORTH OF STATION 3210+00 (BID)
ITEM: 21

| BID ITEM # | ITEM | QTY | UNIT | UNIT COST | COST |
|--|--|-----|------|---------------|---------------------|
| C21-1 | Not Used | - | - | - | - |
| C21-2 | Allowance for NMP Extension North of 3210+00 | 1 | LS | \$325,000.00 | \$325,000.00 |
| C21-3 | Not Used | - | - | - | - |
| C21-4 Through C21-8 | Not Used | - | - | - | - |
| C21-9.1 | Not Used | - | - | - | - |
| C21-9.2 | Allowance for box for future NMP | 1 | LS | \$300,000.00 | \$300,000.00 |
| C21-10 | Not Used | - | - | - | - |
| C21-11 | Not Used | - | - | - | - |
| C21-12 | Not Used | - | - | - | - |
| C21-13 | Not Used | - | - | - | - |
| C21-14 | Not Used | - | - | - | - |
| C21-15 | Not Used | - | - | - | - |
| C21-16 | Not Used | - | - | - | - |
| C21-17 | Not Used | - | - | - | - |
| C21-18 | Not Used | - | - | - | - |
| Bid Item 21: Non-Motorized Pathway North of Station 3210+00 | | | | TOTAL: | \$625,000.00 |

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ATTACHMENT B

AUTHORIZED REPRESENTATIVES; ADDRESSES FOR NOTICES

The District's Representative is:

Bill Gamlen, P.E., Chief Engineer Sonoma-Marin Area Rail Transit District 5401 Old Redwood Highway, Suite 200 Petaluma, CA 94954
Office Phone: 707-794-3049
Mobile Phone: 415-717-5838
Email: bgamlen@sonomamarintrain.org

The Contractor's initial Authorized Representative is:

Mr. George Furnanz
Stacy and Witbeck, Inc.
2800 Harbor Bay Parkway
Alameda, CA 94502

Office Phone: (510) 748-1870
Mobile Phone: (415) 850-6732
Email: gfurnanz@stacywitbeck.com

Copies of all notices from Contractor regarding disputes, termination and default notices shall be delivered to the following persons in addition to the District's Authorized Representative:

Erin McGrath, Chief Financial Officer
Sonoma-Marin Area Rail Transit District
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

Tom Lyons Esq.
Legal Counsel
Sonoma-Marin Area Rail Transit District (SMART)
5401 Old Redwood Hwy., Ste. 200
Petaluma, CA 94954

Copies of all notices from the District regarding disputes, termination and default notices shall be delivered to the following persons **in addition to the Contractor's Authorized Representative:**

ATTACHMENT C

INSURANCE (Contractor Provided Insurance)

1. Insurance Program. The following types of insurance coverage shall be provided:

- a. Primary Commercial General Liability (see Section 2)
- b. Umbrella Liability (see Section 3)
- c. Automobile Liability (see Section 4)
- d. Workers' Compensation/Employer's Liability (see Section 5)
- e. Pollution Liability (see Section 6)
- f. Builder's Risk (see Section 7)
- g. Professional Liability (see Section 8)
- h. Not Used (See Section 9)
- i. Valuable Papers Liability (See Section 10)
- j. Aviation (See Section 11)

Evidence of insurance shall be provided to the District prior to the execution of the Contract by means of a certificate of insurance in form acceptable to the District, with copies of all endorsements attached, or (if requested by the District) by certified copy of the complete policy with all endorsements. Any policy deductibles and self-insured retentions shall be shown on the face of the certificate of insurance. The certificate of insurance shall be accompanied by a document (a copy of State license or letter from insurer) which indicates that the agent signing the certificate is an authorized agent of the insurer.

The cost of the insurance will not be measured, but the cost will be incidental to the Contract Price.

The insurance requirements set forth herein shall be in addition to and not in any way a substitution for all other protection provided under the Contract Documents.

No acceptance and/or approval of any insurance by the District shall be construed as relieving or excusing the Contractor, or the Contractor's surety, from any liability or obligation imposed upon either or both of them by the provisions of this Contract or elsewhere in the Contract Documents.

Unless more specifically described elsewhere in the Contract Documents, the Contractor shall at all times during the term of the Contract, and until notice of final Acceptance from the District, maintain in full force and effect the policies of insurance required by this Contract.

The Contractor shall not commence Work under this Contract until all the insurance required hereunder has been approved by the District, nor shall the Contractor allow any Subcontractor to commence work on its Subcontract until the insurance required of the Subcontractor has been obtained by the Subcontractor and approved by the Contractor. Notwithstanding the foregoing, builder's risk insurance shall not be required until start of construction. The Contractor shall be responsible for determining appropriate limits for Subcontractors.

All insurance policies required by this Attachment C or elsewhere in the Contract Documents shall be written on forms (including the actual wording of the policies and all endorsements) acceptable to the District and with insurance companies that are duly licensed to transact the prescribed coverages in each jurisdiction in which work under the Contract is to be performed and that have a current A.M. Best Rating of not less than A:VII or as otherwise approved by the District.

All insurance policies required by this Attachment C or elsewhere in the Contract Documents (other than workers' compensation and professional liability policies) shall include endorsements stating that the District and any other entities designated by the District are additional insureds (hereinafter collectively referred to as "additional insureds") with respect to liability arising out of or resulting from the operations and completed operations of the named insured under the Contract. Said endorsements shall also state that such coverage provided for the benefit of the additional insureds is primary and other coverage maintained by such additional insureds (if any) shall be non-contributing with the coverage provided under the policies.

All insurance policies required by this Attachment C or elsewhere in the Contract Documents, excluding professional liability policies but including workers' compensation insurance, shall contain waivers of subrogation with respect to the District and any other entities designated by the District. All policies shall provide that the bankruptcy or insolvency of the insured does not relieve the insurance company of its obligations under the policies.

In the event the Contractor maintains insurance with limits exceeding the limits required hereunder, the certificates of insurance provided to the District shall state the full extent of the coverage available to the parties.

Contractor agrees to notify the District immediately upon being advised that any insurance policies issued to address requirements hereunder have been or will be suspended, voided, canceled, modified or reduced in coverage or in limits.

If, during the term of the Contract, the Contractor fails to secure and maintain the required insurance, the District shall have the right (without the obligation to do so) to secure the insurance in the amounts specified in the name of the Contractor, in which case the Contractor shall pay all premiums, deductibles, self-insured retentions or other amounts associated with the insurance and shall furnish all information that may be required in connection with the District's purchase of such insurance. Nothing herein shall preclude the District from exercising all other available rights and remedies as a result of the failure of the Contractor or any Subcontractor to satisfy the insurance requirements set forth herein, including the rights to immediately suspend, discontinue or terminate the Contractor, at its discretion. Failure of the Contractor to provide or maintain any required insurance shall not relieve the Contractor from any liability under this Contract, nor shall the insurance requirements be construed to conflict with the obligations of the Contractor concerning indemnification.

2. Primary Commercial General Liability Insurance.

a. Coverage

Commercial General Liability Insurance coverage shall be at least as broad as the most recently promulgated version of ISO Form CG 0001 (Occurrence-Basic Coverage). The policy shall also include provisions that offer protection against all risks and exposures including the following:

- i. Premises and Operations Coverage with no exclusions for explosion, collapse and underground work (X, C, and U Exclusions).
- ii. Products and Completed Operations (including Latent Defect) Coverage.
- iii. Broad Form Contractual Liability Coverage (Assumed by oral or written agreement) covering the Contractor's obligations, including any indemnity provisions. Contractual liability exclusion to include an exception for insured contract and construction contract to be an insured contract.
- iv. Broad Named Insured Endorsement.
- v. Notice, Knowledge and Unintentional Errors and Omissions Coverage.
- vi. Incidental Malpractice Coverage.
- vii. Independent Contractors Coverage.
- viii. Personal Injury Coverage (Hazards A, B, and C) with no exclusion for liability assumed contractually or injury sustained by employees of the Contractor.
- ix. Broad Form Coverage for damage to property of the District, as well as other third parties resulting from the Contractor's work.
- x. Any aggregate limits shall apply on a "per project" basis.
- xi. Pollution Exclusion shall not be more extensive than the ISO Absolute Pollution Exclusion with "Hostile Fire" and "Building Heating System" Exceptions.
- xii. Railroad Coverage with no exclusion for construction activities within 50 feet of any railroad property. The Contractor must use ISO Form CG 24 17 or equivalent Railroad Endorsement.

b. Limits of Liability

Minimum limits of liability dedicated to the Project of \$2,000,000 for each occurrence and \$4,000,000 annual general aggregate shall be provided. Defense expenses shall be in addition to the limits of liability.

c. Deductibles/Self-Insured Retentions

Contractor is responsible for payment of all deductibles or self-insured retentions.

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d. Additional Insureds

The policy shall name the District and any other entities designated by the District as additional insureds. The Contractor must use ISO Form 20 10 11 85 or equivalent additional insured endorsement. The policy shall contain a cross liability or severability of interest clause including bodily injury claims against any insured by employees of any other insured. Such insurance shall state that it is primary and that any other applicable insurance carried by any insured shall be specifically excess and not contributing therewith.

e. Term of Coverage

Coverage shall be maintained for the full Contract period (e.g., until the Contractor receives notice of final Acceptance from the District), except that extended coverage shall be provided for the Products/Completed Operations policy for not less than five years following the completion and acceptance of all Work under the Contract. The Contractor shall continue to name all additional insureds for the entire period.

f. Other Coverage Features

The policy is also subject to the following requirements:

The policy shall include a provision that no act or omission of the Contractor or any party acting under its direction will affect or limit the obligations of the insurance company in respect of any additional insured, except with respect to provisions limiting coverage for the sole negligence of an additional insured.

The policy shall provide coverage for third-party action over claims, including bodily injury to an employee of any insured or employees of the premises owner or employees of the insured's subcontractors or sub-consultants.

The policy shall delete any warranty stating that coverage is null and void (or words to that effect) if the Contractor does not comply with the most stringent regulations governing the Work under the Contract.

3. Umbrella/Excess Liability Insurance.

a. Coverage

Umbrella/excess liability insurance coverage shall be at least as broad as the underlying primary commercial general liability policy and also include excess coverage for any automobile liability and employer's liability exposures.

b. Limits of Liability

Limits of liability dedicated to the Project shall be \$75,000,000 for each occurrence, \$75,000,000 annual general aggregate, and \$75,000,000 products completed operations aggregate, excess of the primary \$2,000,000/4,000,000 limits for commercial general liability. Defense expenses shall be in addition to the limits of liability. These limits can be achieved under per project aggregate endorsements to annual practice policies provided that project limits are maintained. Excess limits per occurrence and in the aggregate without a separate product/completed operation aggregate is acceptable as well.

c. Deductibles/Self-Insured Retentions

The Contractor is responsible for payment of all deductibles or self-insured retentions.

d. Status of the District and Other Parties as Additional Insureds

The policy shall name the District and any other entities designated by the District as additional insureds.

e. Term of Coverage/Other Coverage Features

The provisions of Section 2(e) and (f), above, shall apply to all Umbrella Liability Policies required hereunder.

4. Automobile Liability Insurance.

a. Coverage

Automobile Liability Insurance coverage shall be at least as broad as the most recently promulgated version of ISO Form CA 0001, Any Auto (Symbol 1), with an MCS-90 Endorsements and a CA 9948 Endorsement attached if hazardous materials or waste are to be transported by the Contractor's vehicles. All vehicles used in performance of the Work shall be insured. Loading and unloading of any motor vehicle must be covered.

b. Limits of Liability

Minimum limits of liability of \$10,000,000 for each occurrence and \$10,000,000 aggregate shall be provided (primary to Umbrella/Excess Liability coverage described in Section 3, above). Lesser limits of liability may be provided in primary policies so long as limits of at least \$10,000,000 for each occurrence and \$10,000,000 aggregate are insured in primary and excess liability policies combined.

Said primary policy shall include IOS Form CA 20 70 10 13 Railroad Endorsement removing the exclusion of coverage for bodily injury or property damage arising out of operations within 50 feet of railroad property.

c. Deductibles/Self-Insured Retentions

The Contractor is responsible for payment of all deductibles or self-insured retentions.

d. Status of the District and Other Parties as Additional Insureds

The policy shall name the District and any other entities designated by the District as additional insureds.

5. Workers' Compensation/Employer's Liability Insurance.

a. Coverage

- i. Coverage A: Statutory workers' compensation as required by the State or applicable federal laws or the applicable laws of other jurisdictions.
- ii. Coverage B: Employer's Liability, including coverage for Federal Employer's Liability Act exposure.

b. Limits of Liability

- i. Coverage A: Statutory.
- ii. Coverage B: Not less than \$2,000,000 bodily injury by accident; \$2,000,000 bodily injury by disease; and \$2,000,000 policy limit by disease (primary to Umbrella Liability coverage described in Section 3, above). Lesser limits of liability may be provided in primary policies so long as limits of at least \$2,000,000 for each occurrence and \$2,000,000 aggregate are in primary and excess liability policies combined.

c. Deductibles/Self-Insured Retentions

The Contractor is responsible for payment of all deductibles or self-insured retentions.

6. Pollution Liability Insurance.

a. Coverage

The Contractor's Pollution Liability policy shall be written on an occurrence basis with coverage for bodily injury, property damage and environmental damage, including cleanup costs arising out of third-party claims, for pollution conditions, and including claims of environmental authorities, for the release of pollutants caused by construction activities related to the Contract. Coverage shall include the Contractor as the named insured and shall include coverage for acts by others for whom the Contractor is legally responsible.

Coverage to be provided for bodily injury to or destruction of tangible property, including the resulting loss of use thereof, loss of use of tangible property that has been physically injured, and natural resource damage.

There shall be no exclusions or limitations regarding damages or injury from existence, removal or abatement of lead paint.

There shall be no insured vs. insured exclusion in the policy.

Defense including costs, charges, and expenses incurred in the investigation, adjustment or defense of claims for damages shall be included.

b. Limits of Liability

Minimum limits of liability dedicated to the Project of \$10,000,000 for each occurrence and \$10,000,000 aggregate must be provided.

c. Deductibles/Self-Insured Retentions

The Contractor is responsible for payment of all deductibles or self-insured retentions.

d. Status of the District and Other Parties as Additional Insureds

The policy shall name the District and any other entities designated by the District as additional insureds.

7. Builder's Risk Insurance.

a. Coverage

The Contractor's Builder's Risk Insurance Policy shall cover all risks of direct physical loss of or damage to property (including additional perils of flood, earthquake and collapse). Coverage shall be as broad as possible with respect to both covered property interests and covered locations. Coverage shall apply to all materials, supplies and equipment that are consumed on or intended for specific installation in the Project while such materials, supplies and equipment are located at the Project site(s). Coverage for transit and storage away from the Project site(s) shall be covered as appropriate.

The policy shall be endorsed (a) waiving the insurance company's rights of recovery under subrogation against all insureds and additional insureds on the policy; (b) designating the District as a loss payee for all claims; and (c) deleting any provisions that void coverage with respect to the District for acts or omissions of the Contractor or any other party.

b. Limits of Liability

Full replacement cost of the work for physical damage perils, with a minimum limit of liability equal to the total value of awarded contract.

c. Deductibles/Self-Insured Retentions

The Contractor is responsible for payment of all deductibles or self-insured retentions. Deductibles or self-insured retentions for earthquake shall be no greater than five percent of the total value at risk at the time of loss. Deductibles or self-insured retentions for all other perils shall not exceed \$250,000.

d. Named Insured and Status of the District and Other Parties as Additional Insureds

The policy shall name the Contractor as the first named insured, the District as an additional named insured, and any other entities designated by the District as additional insureds.

e. Term of Coverage

The insurance shall be maintained until the date of final Acceptance; provided that the Contractor shall not be required to maintain property insurance for any portion of the Project following any transfer of

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control thereof to the District.

8. Professional Liability Insurance.

a. Coverage

Professional Liability insurance shall be provided to protect against liability arising out of any negligent act, error or omission in performance of design or engineering services for the Project. If the Contractor provides Design Professional Services in-house, contractor's professional liability insurance or the equivalent is required. If any Design Professional Services are furnished by a Subcontractor, the Subcontractor shall be required to provide professional liability coverage.

b. Limits of Liability

The minimum limits for the principal designer (whether a Subcontractor or joint venture member of the Contractor) are \$5,000,000 per claim, and \$5,000,000 in the aggregate. The Contractor shall determine coverage limits for itself and any other design Subcontractors.

c. Deductibles/Self Insured Retentions

The Contractor is responsible for payment of all deductibles or self-insured retentions. Any policy deductible shall be subject to approval of the District.

d. Term of Coverage

Coverage shall be maintained during the period starting on the date of the Limited Notice to Proceed and ending on the final Acceptance date, and shall contain an extended reporting period of five years following final Acceptance.

9. Not Used.

10. Valuable Papers.

a. Coverage

Valuable papers insurance shall be provided to assure the restoration of any plans, drawings computations, field notes, or other similar data relating to the Work or the Project in the event of loss or destruction.

b. Limits of Liability

Minimum limits of \$200,000 per loss.

c. Deductibles/Self Insured Retentions

The Contractor is responsible for payment of all deductibles or self-insured retentions. Any policy deductible shall be subject to approval of the District.

d. Status of the District and Other Parties as Additional Insureds

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The policy shall name the District and any other entities designated by the District as additional insureds.

e. Term of Coverage

Coverage shall be maintained during the period starting on the date of the Limited Notice to Proceed and ending when such items and data are turned over to the District.

11. Aviation Insurance. In the event any fixed or rotary aircraft are used in connection with this Agreement and/or in the execution of the work, a minimum of \$10,000,000 of aviation liability insurance must be maintained with the following requirements: the District must be named as an "additional insured" and a waiver of hull damage must be provided in favor of the Contractor and District. Also, if any aircraft is to be used to perform lifts at the project site, a "slung cargo" endorsement must be included to cover the full replacement value of any equipment or material being lifted. All such lifts must be coordinated with the Contractor for approval prior to lift execution.

12. Insurance No Limitation of Liability. Insurance amounts required by this Attachment C shall not act as limitations of the Contractor's liability under this Contract.

13. Renewal Policies. The Contractor shall promptly deliver to the District a certificate of insurance and copies of all endorsements with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverages for the terms specified herein. Such certificate shall be delivered no later than the policy anniversary date and shall bear a notation evidencing payment of the premium therefor. If requested by the District from time to time, certified duplicate copies of the renewal policy shall also be provided.

14. Additional Insurance. The Contractor shall, by mutual agreement with the District and at the District's cost, provide any additional insurance as may be required by the District. The Contractor shall provide certificates of insurance evidencing any such additional insurance coverage.

15. Reinsurance. When the Contractor has utilized a fronting company to place insurance (as in the use of a captive), the Contractor shall assure that such reinsurer has consented to the following terms being made part of the insurer's policy and that these terms are also part of the reinsurance agreements between the insurer and each of the reinsurers:

(1) The insurers shall be the trustee of the reinsurance for the benefit of each insured under the policy and shall covenant to hold all rights and benefits under each such reinsurance contract in trust for each insured under the policy. Consistent with the foregoing, each reinsurer is aware that the insurer has constituted itself as a trustee of all reinsurance for the insureds under the policy and that the reinsurance is payable to the insurer as trustee for each of the insureds.

(2) In the event of the insolvency of the insurer, each reinsurer shall be responsible directly to each insured under the policy as beneficiary of the reinsurance contract on the basis of liability of the insurer without diminution because of the insolvency of the insurer.

16. Commercial Unavailability of Required Coverage. If, through no fault of the Contractor, any of the insurance coverage required under this Contract (or any of the required terms of such coverage, including policy limits) become unavailable or are available only with commercially unreasonable premiums, the District will work with the Contractor to find commercially reasonable alternatives to the required coverages that are acceptable to the District. To demonstrate that a specific coverage (or component of coverage) is unavailable or commercially unreasonable, the Contractor must document, by providing a letter from the Contractor's insurance broker or agency, that the Contractor has sought to obtain that coverage (or component of coverage) from insurance carriers and that the coverage (or component of coverage) either is not currently offered or that it cannot be provided at a commercially reasonable price. Such letter shall include the names of the insurance carriers and appropriate detail regarding their unwillingness to provide coverage and/or premium indications. The Contractor shall not be entitled to any increase in the Contract Price for increased costs or borne risks resulting from the unavailability of coverage and the requirement to provide acceptable alternatives. The District shall be entitled to a reduction in the Contract Price if it agrees to accept alternative policies providing less than equivalent coverage, with the amount to be determined based on evidence of insurance premiums as of the Proposal Due Date. The District's right to a reduction in the Contract Price as set forth in the preceding sentence shall be without regard to the insurance costs expended by the Contractor for the less than equivalent coverage or other insurance required under this Contract.

17. Prosecution of Claims. Unless otherwise directed by the District in writing, the Contractor shall be responsible for reporting and processing all potential claims by the District or the Contractor against the insurance required to be provided under this Contract. The Contractor agrees to report timely to the insurer(s) any and all matters which may give rise to an insurance claim and to promptly and diligently pursue any and all insurance claims on behalf of the District, whether for defense or indemnity or both. The District agrees to promptly notify the Contractor of the District's incidents, potential claims, and matters which may give rise to an insurance claim by the District, to tender its defense or the claim to the Contractor, and to cooperate with the Contractor as necessary for the Contractor to fulfill its duties hereunder.

18. Disclaimer. The Contractor and each Subcontractor have the responsibility to make sure that their insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage which they deem advisable, whether or not specified herein.

ATTACHMENT D
SUBCONTRACTING PLAN REQUIREMENTS FOR CV-DB-18-001

It is the policy of SMART that Contractor provide a full and equal range of opportunities for DBEs to compete for and perform subcontract work at all monetary levels arising from the Design-Build Contract for SMART's Windsor Extension Project. SMART also highly encourages the use of local business subcontractors. SMART recognizes that it is not reasonable to require design-build proposers to identify specific Subcontractors at an early design stage. Therefore, rather than requiring Contractor to list all DBE Subcontractors at the time of the proposal, when the Subcontractors are unable to assess the true cost of the work and risks inherent in the Project due to the incomplete design, Proposers will only be required to identify certain Subcontractors in their Proposals, as described in the Invitation to Propose (ITP), and otherwise will be allowed to defer identification of Subcontractors until after Award.

A. CONTRACT REQUIREMENT REGARDING DBE PARTICIPATION

SMART has determined that 4.44% DBE participation may reasonably be expected to compete for professional services, construction work and provision of materials, equipment and supplies for the Project. It is SMART's intent that DBEs have the maximum practical opportunity to participate as subcontractors under the Contract.

B. SUBCONTRACTING PLAN REQUIREMENTS

1. Minimum Requirements

At a minimum, the Subcontracting Plan shall:

- a. Describe the nature of all contract support to be obtained from sources other than Contractor or the Subcontractors listed in the Contractor's proposal;
- b. Describe the competitive procedures and methods planned to procure Subcontracts for services, materials and products for unlisted Subcontractors and pre-approved Subcontractors;
- c. Indicate the basis of bid evaluation and selection of said unlisted and pre- approved Subcontractors;
- d. Provide a range of subcontracting opportunities for firms of differing capacities.
- e. If the Contractor or an Affiliate is a DBE, provide information regarding work that will actually be performed by such entity.

2. Pre-approved Subcontractors

For pre-approved firms identified in the Contractor's proposal as potential Subcontractors that will be asked to bid on an identified portion of the Work, the Subcontracting Plan shall include procedures that provide for competitive bidding among the pre-approved Subcontractors and for selection of the lowest responsive pre-approved Subcontractor. Contractor is not required to perform additional good faith outreach efforts as part of the competitive procedures for obtaining competitive bids from pre-approved Subcontractors.

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3. Substitution of Listed Subcontractors (excluding professional services)

The Subcontracting Plan shall address the process for substitution of a new Subcontractor in place of a listed Subcontractor pursuant to the Subletting and Subcontracting Fair Practices Act, Public Contract Code sections 4100 et seq. Contractor shall either: 1) provide evidence that the proposed Subcontractor is the next lowest, responsive, responsible Subcontractor identified in the Proposal as having been contacted through Contractor's pre-proposal good faith outreach efforts; or 2) provide evidence of the competitive bidding process utilized to select the proposed Subcontractor, including evidence of Contractor's post-award good faith outreach efforts and a representation that the Subcontractor proposed for substitution is the lowest, responsive, responsible bidder.

| Design-Build Entity Member(s) (List all legal entities prequalified) | | |
|--|-------------------------------------|---|
| Discipline (i.e. general contractor, architect, engineer, track installation subcontractor, etc.) | Name | Legal Entity (i.e. corporation, partnership, sole proprietor) |
| Design-Builder | Stacy and Witbeck, Inc. | Corporation |
| General Contractor | Stacy and Witbeck, Inc. | Corporation |
| Principal Engineer | Andy Sokol, (STV, Inc.) | Corporation |
| Architect of Record | Richard Quirk (STV, Inc.) | Corporation |
| Structures Lead Designer | Richard Campbell (STV, Inc.) | Corporation |
| Heavy and Highway | Bay Line Cutting and Coring, Inc. | Corporation |
| Heavy and Highway | Ghilotti Construction Company, Inc. | Corporation |

Contractor has listed the following Subcontractors pursuant to the Subcontractor Listing Law, California Public Contract Code §4100 *et seq.*:

| Name of Subcontractor and Location of Mill or Shop | Description of Work: Reference To Bid Items | Subcontractor's License No. |
|--|---|--------------------------------|
| Stoer & Graff, Inc. 1830 Phillips Lane Antioch, CA 94509 | Pile Driving | LIC: 397082 DIR: 1000007294 |
| Tyrrell Resources PO Box 8219 Truckee, CA 96162 | Tree Trimming & Removal | LIC: 938998 DIR: 1000007965 |
| Sonoma Reinforcing, Inc. 10001 Old Redwood Hwy Windsor, CA 95492 | Reinforcing Steel | LIC: 823619 DIR: 1000013275 |
| De Kay Demolition & Clearing 8105 Edgewater Dr. #215 Oakland, CA 94621 | Demolition | LIC: 902267 DIR: 1000004429 |
| Ahlborn Fence & Steel, Inc. 1230 Century Ct Santa Rosa, CA 95403 | Handrail & Fencing | LIC: 793504 DIR: 1000001160 |

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| Name of Subcontractor and Location of Mill or Shop | Description of Work: Reference To Bid Items | Subcontractor's License No. |
|---|---|----------------------------------|
| Mike Brown Electric Co 561-A Mercantile Dr. Cotati, CA 94931 | Electrical | LIC: 306767 DIR: 1000000469 |
| Ghilotti Construction Company, Inc. 246 Ghilotti Avenue Santa Rosa, CA 95407 | Civil Work (Partial) | LIC: 644515 DIR: 1000003044 |
| ISI Inspection Services, Inc. 1798 University Ave Berkeley, CA 94703 | Quality Control | LIC: N100054 DIR: 1000005329 |
| Bay Line Cutting & Coring, Inc. 501 Cesar Chavez Street, Suite 101B San Francisco, CA 94124 | Saw Cut | LIC: 809660 DIR: 1000003185 |
| eLock Technologies 800 Heinz Ave, Suite 11 Berkeley, CA 94710 | Install Bike Lockers | LIC: 1010994 DIR: 1000035040 |
| STV Incorporated 505 14 th Street, Suite 1060 Oakland, CA 94612 | Design | LIC: N/A DIR: 1000026636 |
| Northern Aggregates PO Box 1566 Willits, CA 95490 | Ballast Supply | LIC: N/A DIR: 1000032178 |
| Canyon Rock Co, Inc. 7525 Hwy 116 Forestville, CA 95436 | Aggregate and Concrete Supply | LIC: 549967 DIR: 1000016224 |
| Con-Fab California, LLC 1910 Lathrop Road Lathrop, CA 95330 | Precast Bridge Components | LIC: 1018821 DIR: 1000043194 |
| Castle Concrete Pumping, Inc. 1220 Century Ct Santa Rosa, CA 95403 | Concrete Pumping | LIC: 801026 DIR: 1000010606 |
| ICF Jones & Stokes, Inc. 201 Mission Street, Suite 1500 San Francisco, CA 94105 | Biological Monitoring and Surveying | LIC: C3094107 DIR: 1000010066 |
| Andy Ramirez Enterprises 374 Decanter Circle Windsor, CA 95492 | Trucking (Partial) | LIC: N/A DIR: 1000026160 |

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C. REPORTING REQUIREMENTS

1. Subcontract Information. Whenever a Subcontract is proposed for award, the Contractor shall promptly provide the District with the following information regarding the subcontract for review and approval:
 - a. The Subcontractor's name and business address;
 - b. The total dollar amount of the Subcontract;
 - c. The specific work items covered by the Subcontract;
 - d. The estimated quantities of each work item;
 - e. Individual unit prices (if applicable);
 - f. DBE status and certification, if applicable; and
 - g. Except as otherwise provided in paragraph B(2) a written summary of Contractor's good faith efforts to elicit DBE Subcontractor proposals.
2. Quarterly DBE Progress Reports. The Contractor shall keep records regarding the progress of DBE participation. The Contractor shall provide DBE progress reports to SMART monthly as part of its pay application in a format approved by SMART, including the following information for each subcontract:
 - a. The name of the Subcontractor;
 - b. DBE status and certification, if applicable;
 - c. Dollar amount of the subcontract;
 - d. Quantities (or other measure of performance) completed as of the quarter just ended;
 - e. Dollar amount paid under the subcontract as of the end of the quarter (separately stating the amount paid during the quarter in question with a cumulative total for the quarter and all prior periods);
 - f. Dollar amount retained as of the end of the quarter;
 - g. Dollar amount of outstanding invoices and of uncompleted work remaining on the subcontract; and
 - h. Expected completion date of subcontract.

The report shall also include a narrative summary stating whether the Contractor is on target with respect to its DBE participation commitment, whether it has exceeded its commitment (and stating the amount of the excess), or whether it is behind (and stating the amount of the deficit).

ATTACHMENT E – FTA AND 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, the Consultant 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. Consultant 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. Consultant'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 Consultant, 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 General Services Administration's regulations at 41 CFR Part 301-10, 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:
 - 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.

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- 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 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.
- 6. Clean Water.** The Contractor agrees:
 - a. to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, *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 \$100,000 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 who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of 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 shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to 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.

[Name of Contractor]

By: _____

Print Name: _____

Title: _____

Date: _____

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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, *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 \$100,000 financed in whole or in part with Federal assistance provided by FTA.

10. Recovered Materials. The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

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 Article 7 of 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

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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 Contractor, 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: _____

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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:

i. Race, Color, Creed, National Origin, Sex In accordance with Title VII of the Civil Rights Act, 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, creed, national origin, sex, 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.

ii. 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.

iii. 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 Regarding Disadvantaged Business Enterprise (DBE) Information (see Attachment F – 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 agency's overall goal for DBE participation is **4.4%**. A separate contract DBE goal of **4.4%** has been established for this procurement.
- b. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as SMART deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

The Contractor will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

- c. The Contractor is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from SMART. In addition, Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this Agreement is satisfactorily completed.
- d. The Contractor must promptly notify SMART whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of SMART.

22. Exclusionary or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal statute or regulations, Consultant 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 Consultant and Third Parties. Absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to Consultant, 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 Consultant.

24. Geographic Restrictions. Consultant 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. Consultant shall comply with the following requirements:

Record Retention. Consultant shall, during the course of the Agreement and for three years after final payment, maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to the Agreement as SMART may require.

a. Access to Records. Consultant 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 Consultant and its subconsultants pertaining to the Agreement. In accordance with 49 U.S.C. § 5325(a), Consultant shall require each subconsultant 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 subconsultant agreement and to audit the books, records, and accounts involving that subconsultant agreement as it affects the Agreement.

b. State Audit, Inspection, Access to Records and Retention of Records Requirements. Consultant and its subconsultants shall establish and maintain an accounting system and records that properly accumulate and segregate incurred costs by line item for the project. Consultant and its subconsultants' 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. Consultant and its subconsultants shall permit representatives of the State and State Auditor to inspect, examine, make excerpts or transcribe Consultant and its subconsultants' 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 Consultant and its subconsultants 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 Consultant and its subconsultants 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 Consultant and its subconsultants 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 Consultant and its subconsultants. Should Consultant and its subconsultants 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 Consultant and its subconsultants from any source.

The Consultant 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 Consultant 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 Consultant, 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 Consultant to SMART.

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

26. Americans with Disabilities Act. Consultant 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

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- Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- c. U.S. DOT regulations "Americans with Disabilities (ADA) 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.** Consultant 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. Employee Protection Requirements.** Consultant shall comply with section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 327 through 332, and shall ensure that the wages of every mechanic and laborer will be computed on the basis of a standard work week of 40 hours, and that each worker will be compensated for work exceeding the standard work week at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Consultant 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.
- 29. State Fair Employment Practices.** In the performance of work under this Agreement, Consultant and its subconsultants 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. Consultant and its subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and its subconsultants 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. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Consultant and its subconsultants shall include the nondiscrimination and compliance provisions of this clause in all subconsultant agreements to perform work under this agreement.

Consultant and its subconsultants 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, Consultant 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, Consultant shall accept products and services with dimensions expressed in the metric system of measurement.

31. Support of Agreement Costs. All costs charged to the Agreement shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of the charges. The Consultant shall permit the Government’s authorized representatives to inspect all payrolls, records of personnel, invoices of materials and other relevant data and records, and to audit its books, records and accounts.

32. Environmental Protection. Consultant shall comply with the following requirements:

- a. Consultant 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. Consultant shall report and require each subconsultant at any tier to report any violation of these requirements resulting from any Contract activity of Consultant or subconsultant to FTA and the appropriate U.S. EPA Regional Office.

33. Privacy Act. Consultant 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. Consultant 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.

34. Incorporation of Federal Transit Administration (FTA) Terms. The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, 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.

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ATTACHMENT F – DBE INFORMATION & COMMITMENT FORM

NOTICE TO PROPOSERS REGARDING DISADVANTAGED BUSINESS ENTERPRISE (DBE) INFORMATION

SMART has established a DBE goal for this Contract of 4.4%.

1. TERMS AS USED IN THIS DOCUMENT

“Disadvantaged Business Enterprise” or “DBE” means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).

“SMART” means the Sonoma-Marin Area Rail Transit District.

“Small business” is as defined in 49 CFR 26.65.

2. AUTHORITY AND RESPONSIBILITY

- A. DBEs and other small businesses are strongly encouraged to participate in the performance of Agreements financed in whole or in part with federal funds (See 49 CFR 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”). The Contractor should ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Stacy and Witbeck, Inc. is encouraged to use services offered by financial institutions owned and controlled by DBEs.

3. SUBMISSION OF DBE INFORMATION

- A. Only DBE participation will be counted towards the contract goal; however, all DBE participation shall be collected and reported.

4. DBE PARTICIPATION GENERAL INFORMATION

It is the Contractor’s responsibility to be fully informed regarding the requirements of 49 CFR Part 26, and the Department’s DBE program developed pursuant to the regulations. Particular attention is directed to the following:

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP), located online at

<http://www.californiaucp.com/>.

- B. A certified DBE may participate as a prime consultant, subconsultant, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE bidder, not bidding as a joint venture with a non-DBE, will be required to document one or a combination of the following:
 - (1) The proposer is a DBE and will meet the goal by performing work with its own forces.
 - (2) The proposer will meet the goal through work performed by DBE subconsultants, subconsultants, suppliers or trucking companies.
 - (3) The proposer made adequate good faith efforts (See Section 7 below) to meet the goal.
- D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55; that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- F. The Consultant shall list only one subconsultant for each portion of work as defined in their proposal and all DBE subconsultants should be listed in the cost proposal list of subconsultants.
- G. A prime consultant who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subconsultants.

5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP.
- B. Access the CUCP database at: <http://www.dot.ca.gov/ucp/GetLicenseForm.do>.
 - Searches can be performed by one or more criteria
 - Follow instructions on the screen

6. MATERIALS OR SUPPLIES PURCHASED FROM DBES COUNT TOWARDS DBE CREDIT UNDER THE FOLLOWING CONDITIONS:

- A. If the materials or supplies are obtained from a DBE manufacturer, count one hundred percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.
- B. If the materials or supplies are purchased from a DBE regular dealer, count sixty percent of the cost of the materials or supplies. A DBE regular dealer is a firm that

owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not an ad hoc or Agreement-by -Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.
- D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.
- E. For DBE trucking companies: credit for DBEs will count towards DBE credit, and credit will count towards the DBE goal, under the following conditions:
 - (1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular Agreement, and there cannot be a contrived arrangement for the purpose of meeting the DBE goal.
 - (2) The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the Agreement.
 - (3) The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.
 - (4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.
 - (5) The DBE may also lease trucks from a non-DBE firm, including an owner- operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.
 - (6) For the purposes of this Section 6, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

7. SHOWING GOOD FAITH EFFORTS FOR DBE UTILIZATION

The following lists samples of things a Contractor can do to show it made good faith efforts in obtaining Disadvantaged Business Enterprise (DBE) participation.

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- Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The contractor must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The contractor must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- Negotiating in good faith with interested DBEs. It is the contractor's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- A contractor using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a contractor's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the contractor of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

DBE COMMITMENT FORM

DBE COMMITMENT AND UTILIZATION FORM

Stacy and Witbeck, Inc. has satisfied the requirements of the solicitation in the following manner (please check the appropriate space):

Stacy and Witbeck, Inc. is committed to a minimum of _____% DBE utilization on this contract.

Stacy and Witbeck, Inc. (if unable to meet the DBE goal of 4.4%) is committed to a minimum of _____% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

DBE PARTICIPATION SCHEDULE

Stacy and Witbeck, Inc. shall complete the following information for all DBE's participating in the contract that comprises the DBE Utilization percent stated in the DBE Utilization Form. Stacy and Witbeck, Inc. shall also furnish the name and telephone number of the appropriate contact person should the Authority have any questions in relation to the information furnished herein.

STACY AND WITBECK, INC. DBE INFORMATION

This form on the following page must be signed and dated at contract execution. Also list a phone number in the space provided and print the name of the person to contact.

ATTACHMENT F

DBE UTILIZATION - IDENTIFICATION AND INFORMATION FORM – WINDSOR EXTENSION PROJECT

| NAME AND ADDRESS | CONTACT NAME AND TELEPHONE NUMBER | PARTICIPATION PERCENT (OF TOTAL CONTRACT VALUE) AND AMOUNT | DESCRIPTION OR PORTION OF WORK OR SERVICES SUBCONTRACTED | CONTRACTOR LICENSE # & DIR # | DBE CERTIFIED NUMBER |
|--|-----------------------------------|--|--|------------------------------|----------------------|
| Andy Ramirez Enterprises 374 Decanter Circle Windsor, CA 95492 | Andy Ramirez 707-495-3566 | 0.49% | Trucking (Partial) | N/A | 42974 |
| | | \$240,000.00 | | 1000026160 | |
| ISI Inspection Services, Inc. 1798 University Ave Berkeley, CA 94703 | Leslie A Sakai 415-243-3265 | 0.46% | Quality Control | N/A | 32109 |
| | | \$225,000.00 | | 1000005329 | |
| Tyrrell Resources, Inc. 11768 Atwood Road, Suite 12 Auburn, CA 95603 | Cheryl Tyrrell 530-243-8733 | 0.91% | Tree Removal | 938998 | 38525 |
| | | \$440,000.00 | | 1000007965 | |
| Bay Line Cutting & Coring, Inc. 501 Cesar Chavez Street, 101B San Francisco, CA 94124 | Juan Arreguin 415-508-1800 | 0.02% | Saw Cutting | 809660 | 21117 |
| | | \$13,000.00 | | 1000003185 | |
| ABSL Construction 29393 Pacific St. Hayward, CA 94544 | Luis Allende 510-727-0900 | 0.03% | Grinding | 621781 | 5270 |
| | | \$15,000.00 | | 1000002818 | |
| Valdivia Trucking 285 Samantha Way Windsor, CA 95492 | Raul Valdivia 707-583-6523 | 0.04% | Trucking (Partial) | N/A | 43359 |
| | | \$20,000.00 | | N/A | |
| Double M Trucking 710 Dutton Street Winters, CA 95695 | John Martin 530-795-4181 | 0.04% | Trucking (Partial) | N/A | 414 |
| | | \$20,000.00 | | N/A | |
| SIGNED BY (& PRINT): _____ <u>George Furnanz</u> DATE: _____ PHONE: _____ | | | | | |

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ATTACHMENT G

SCOPE AND CONTRACT CLARIFICATIONS

This Attachment G clarifies and memorializes the Scope of Work and Project understandings and clarifications as discussed between Stacy and Witbeck, Inc. and the Sonoma-Marin Area Rail Transit District (SMART). The clarifications below supersede various contract documents (Program Requirements, Design Criteria, General Conditions, Baseline Documents, Reference Documents, Addenda, etc.). Each item includes a general description and a revision of specific contract documents; however, omission of a specific contract document revision is not intended to imply a change to the spirit of the understanding or clarification.

1. Stacy and Witbeck, Inc. and the Sonoma-Marin Area Rail Transit District (SMART) shall collaboratively work to achieve a Basis of Design Document by 12/1/19. This document shall serve to solidify the following design elements:
 - a. Bridge Types
 - b. Bridge Span Lengths
 - c. Drainage Culverts to be Replaced
 - d. Waterway Apertures
 - e. NMP Extents
 - f. Airport Boulevard crossing configuration, and limits of Airport Blvd Widening.
2. The Sonoma-Marin Area Rail Transit District (SMART) shall be responsible for any jurisdictional or other approvals required for any increased wetland impacts, or tree removals associated with the extension of the NMP between Bell Road and Mitchell Lane.