



## **BOARD OF DIRECTORS REGULAR MEETING AGENDA JANUARY 15, 2025 - 1:30 PM**

Members of the public who wish to attend in person may do so at:

5401 Old Redwood Highway, 1<sup>st</sup> Floor  
Petaluma, CA 94954

The SMART Board of Directors will facilitate using a dual format with listening and participation available through Zoom and in-person. SMART provides several remote methods for viewing the SMART Board Meetings and providing Public Comment.

### **HOW TO WATCH THE LIVE MEETING USING THE ZOOM**

<https://sonomamarintrain-org.zoom.us/j/85410509881?pwd=pButHwakIVNRUQA9u5YBDy0fHXFD2h.1>

Webinar ID: 854 1050 9881

Passcode: 971474

### **TELECONFERENCE**

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### **HOW TO PROVIDE COMMENTS ON AGENDA ITEMS**

*Prior To Meeting:* Technology limitations may limit the ability to receive verbal public comments during the meeting. If you wish to make a comment you are strongly encouraged to please submit your comment to [Board@SonomaMarinTrain.org](mailto:Board@SonomaMarinTrain.org) by 5:00 PM on Tuesday, January 14, 2025

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



# BOARD OF DIRECTORS REGULAR MEETING AGENDA January 15, 2025 – 1:30 PM

Members of the public who wish to attend in person may do so at:  
5401 Old Redwood Highway, 1<sup>st</sup> Floor  
Petaluma, CA 94954

1. Call to Order
2. Approval of the December 18, 2024 Board Meeting Minutes
3. Board Member Announcements
4. General Manager’s Report
5. Public Comment on Non-Agenda Items

### Consent Calendar

- 6a. Accept Monthly Ridership Report – December 2024
- 6b. Approve Monthly Financial Status Report – November 2024
- 6d. Authorize the General Manager to Execute Contract Amendment No. 3 to Contract No. OP-SV-20-007 with Nick Barbieri Trucking, LLC DBA Redwood Coast Fuels - North Bay Petroleum in an amount no-to-exceed \$1,500,000

### Regular Calendar

7. Establish an Ad Hoc Committee to Review Citizens Oversight Committee Applications and Recommend Appointments – *Presented by General Manager Cumins*
8. Authorize the General Manager to Execute Contract No. OP-SV-24-016 with Quality Sprayers, Inc for Vegetation Control Services on SMART’s Right-of-Way in an amount not-to-exceed \$413,813 for a three-year contract with provisions for two (2) optional one-year extensions – *Presented by Chief Operations Officer, Marc Bader*

### Closed Session

9. Conference with Board of Directors regarding labor negotiations General Manager – Pursuant to California Government Code Section 54957.6  
Agency Designated Representative – Board of Directors’ Chair  
Employee: Unrepresented
10. Report Out Closed Session
11. Next Board of Directors Meeting, February 19, 2025 – 1:30 PM – 5401 Old Redwood Highway, 1<sup>st</sup> Floor, Petaluma, CA 94954
12. Adjournment

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#### ACCOMODATIONS:

Public participation is solicited without regard to race, color, national origin, age, sex, gender identity, religion, disability or family status. Upon request, SMART will provide for written agenda materials in appropriate alternative formats, disability-related modification or other accommodation, to enable individuals to participate in and provide comments at/related to public meetings. Please submit a request, including your name, phone number and/or email address, and a description of the modification, accommodation, service, or alternative format requested at least two (2) days before the meeting. Requests should be emailed to *Leticia Rosas, Clerk of the Board* at [lrosas@sonomamarintrain.org](mailto:lrosas@sonomamarintrain.org) or submitted by phone at (707) 794-3072. Requests made by mail SMART’s, 5401 Old Redwood Highway, Suite 200, Petaluma, CA 94954 must be received at least two days before the meeting. Requests will be granted whenever possible and resolved in favor of accessibility.



**BOARD OF DIRECTORS  
MEETING MINUTES**

**December 18, 2024 – 1:30 PM**

5401 Old Redwood Highway, 1<sup>st</sup> Floor  
Petaluma, CA 94954

1. Call to Order

Chair Lucan called the meeting to order at 1:30pm. Directors Colin, Coursey, Fudge, Pahre, Rabbitt, and Sackett were present. Director Garbarino arrived later. Directors Farac, Paulson, and Vice Chair Bagby were absent.

Director Garbarino arrived at 1:32pm.

2. Approval of the November 20, 2024, Board Meeting Minutes

**MOTION:** Director Rabbitt moved approval of the November 20, 2024, Board Meeting Minutes as presented. Director Sackett second. The motion carried 8-0 (Directors Farac, Paulson, and Vice Chair Bagby were absent.)

3. Board Member Announcements

Director Fudge reported that the large sign for the SMART station in Windsor was installed. The community is excited, though some feel the sign is slightly overpowering compared to the building. Nonetheless, the sign has confirmed for many that the train is coming to town.

Chair Lucan shared that Santa Claus was on the SMART train on December 7, 2024. He was on the train with his kids and enjoyed the Toy Drive and festive decorations. He thanked the staff for their hard work on the event.

4. General Manager's Report

General Manager Cumins provided an overview on the following:

- System Closure Update
- Contracts/ Procurement over \$ 100k
- Ridership Report
- MASCOTS Update
- Construction Update

- 2024 Annual Report
- Highlights of the Month
- Questions

#### System Closure Update

General Manager Cumins reported on a weekend closure for the Petaluma North Station and Todd Road repairs was severely impacted by unexpected storm damage, including fallen trees and track damage. The operations team quickly cleared the debris, but delays caused by electrical issues pushed the project 10-12 hours behind schedule.

By Sunday morning, it was clear Monday service wouldn't be possible, and the decision was made to cancel it. Communication efforts were led by Allison Mattioli, who stepped up despite being new to the team, with support from Samantha Frias and Cassandra Perez for customer service. Transit partners helped spread the word, and Golden Gate Transit provided extra buses.

By late Monday, testing was completed, and trains resumed service early Tuesday. Special recognition was given to Aaron Parkes for his around-the-clock work, as well as to the entire SMART team for their dedication and cooperation, including Bill Gamlen, Michael Wiltermood, and Marc Bader.

#### Comments

Director Sackett shared a county employee's positive feedback on improved communication and prompt issue resolution. Despite Monday's concerns, the employee valued the train, especially after tough weather driving. Director Sackett thanked County staff who rely on SMART.

Director Coursey asked about Monday's platform turnout. General Manager Cumins confirmed several showed up, but communication efforts were in place. A few missed the message, but there were no major issues, just some disappointment. Director Coursey praised the communication efforts.

Director Pahre expressed appreciation for the offer of alternative transportation, highlighting its positive publicity and caring gesture, and asked if the number of people who utilized the service was known. General Manager Cumins confirmed positive feedback, noting Clipper cards were distributed as a more effective solution than a bus bridge.

Chair Lucan thanked General Manager Cumins and the entire SMART team for their dedication, highlighting the significance of top-level managers standing on SMART station platforms in the rain. He recognized the hard work of crews who worked late over the weekend and expressed appreciation for the team built at SMART. He specifically thanked Aaron Parkes, wishing him rest, and acknowledging his commitment to safety, a core value of the organization.

#### Contracts/ Procurement over \$ 100k

Mission Linen Supply Contract Amendment No. 3 to Contract No. OP-SV-20-010 will provide for rental and laundering of employee uniforms for operations personnel in an amount not-to-exceed \$30,000 a total contract amount of \$165,000.

### Ridership Report

- November ridership: 78,132, a decline due to holidays and rainy weather.
- Despite the decrease, it was still 19% higher than November 2023.
- November average weekday ridership: 3,233, 20% above November 2023.
- December weekday ridership recovered to 3,588, 36% higher than December 2023.
- SMART leads Bay Area in ridership recovery, with October ridership 69% higher than pre-pandemic levels.
- For the first time ever, SMART had the highest ridership recovery rate of any commuter rail system in the U.S., surpassing Fort Worth.
- November Pathway trips totaled 61,246.
- Trips were slightly down from recent months, likely due to rainy weather during that week.
- However, trips were 11% higher compared to November 2023.

### MASCOTS Update

- MASCOTS introduction, existing conditions, and key findings presented to all boards in Sonoma and Marin counties, except Sonoma County Transit.
- Monthly meetings of General Managers and Executive Directors ongoing.
- Recent review of service planning recommendations completed.
- Next steps include reviewing costs and funding implications for affected agencies.
- Title IV analysis and outreach plan scheduled for early 2025.
- Finance Subcommittee met monthly to discuss funding distribution scenarios.
- Marketing coordination group met monthly to improve coordination and plan future outreach activities.

### Construction Update

#### *Windsor Extension:*

- Windsor Extension track work completed.
- Station platform and shelters constructed.
- Pedestrian undercrossing completed.
- Parking lot under construction.
- Grade crossing equipment installed, signal houses in place.
- Train testing planned for February or March.
- Shelter roof installation underway, captured by planning manager during crane operation.

#### *Petaluma North Station:*

- Track work for Petaluma North Station was completed.
- Station, platform, and shelters were constructed.
- Parking lot is still under construction.
- Grade crossing equipment and signal houses were installed.
- Train testing is currently underway.
- Ribbon-cutting event planned for January 10th.
- Station is scheduled to open on January 10th, pending parking lot completion and favorable weather.

#### *Todd Road Crossing:*

- Contractors and staff worked Friday night during the storm to cut rail and advance the project.
- Their efforts were greatly appreciated.

### *McInnis Pathway*

- Pathway paved and bridge installed.
- Grade crossing equipment in place.
- Fencing installation in progress.
- Anticipated opening around Christmas.

### 2024 Annual Report

- FY24 Ridership
  - SMART achieved 850,270 riders in FY24, setting an all-time record.
  - Ridership was 33% higher than FY23 and 19% above the FY24 goal.
  - Total passenger miles for FY24 amounted to 18.4 million.
  - SMART Connect had over 8,000 riders in FY24, with growth expected to exceed 13,000 in FY25.
- FY24 Goal
  - FY25 goal set at 950,000 riders during budgeting process.
  - Monthly records set in July, August, September, and October.
  - On pace to exceed 1 million riders in FY25.
  - Milestone considered a huge achievement and cause for excitement.
- Pathway Usage
  - Pathway usage was strong in FY24, with 763,325 total pathway trips.
  - August 2024 set an all-time monthly record of 94,019 pathway trips.
- Service Changes
  - Launched SMART Connect shuttle at Larkspur in June 2024.
  - Increased service to the Marin County Fair, serving over 6,000 trips.
  - Added 4 weekday trips and 4 weekend trips.
  - Improved SMART Connect airport shuttle service by adjusting hours and expanding service area.
- Fares
  - Continued field trip program, hosting 59 field trips.
  - Served 1,761 students and 439 chaperones.
  - Implemented free fares for seniors and youth in April 2024, increasing youth ridership by 99% and senior ridership by 144%.
  - Reduced Rail and Sail fare to \$10 in April 2024
- Freight
  - Delivered 720 carloads to date, 22% above 2023.
  - December expected to be a record month for customers.
  - Replaced 200 ties and repaired bridges and flood damage.
  - Rebuilt 2 private crossings and refurbished the Schellville depot.
  - Rebuilt the Lagunitas spur.
  - Stored 49 Caltrain cars on storage track.
- Extensions
  - Healdsburg was amended into Plan Bay Area 2050.
  - Cloverdale extension expected to be identified in the State Rail Plan (Dec 2024).
  - Ongoing efforts to include Cloverdale in Plan Bay Area 2050.

- Bikes
  - Carried nearly 115,000 bicycles in FY24, setting a record.
  - Partnered with the City of Petaluma to install a bike fix-it station.
  - Facilitated bike share at SMART stations in October 2024.
- Customer Experience
  - Installed pathway wayfinding signage.
  - Installed real-time platform signage.
  - Extended free parking from 4 AM to midnight
  - Implemented overnight parking with a \$5 nightly charge.
  - Enabled rider alerts on Google Maps, Apple Maps, and the Transit app.
- Projects
  - Completed LED lighting project.
  - Completed McDowell Boulevard crossing reconstruction.
  - Continued work on McInnis to Smith Ranch (expected completion December 2024).
  - Petaluma North Station opening January 2025
  - South Point Boulevard to Main Street completed in January 2025
  - Golf Course to Bellevue Avenue completed in January 2025
  - Windsor Extension opening Spring 2025
- Grants
  - Joanne Parker led efforts that brought in over \$110 million in grants in 2024.
  - Clean California grant: \$1 million for pathway signage.
  - Caltrans Planning Grant: \$400,000 for quality-of-life study.
  - "Safe Streets for All" Federal Grant: \$7 million for Guerneville to Airport pathway.
  - TAM RM3 Grants:
    - \$4.7 million for Hannah Ranch to Rowland pathway segment.
    - \$224,000 for Civic Center Kiss and Ride preliminary engineering.
    - \$2.8 million for Windsor Rail Grade Separation.
  - Largest single grant in SMART history: TIRCP \$81 million for Healdsburg extension.
  - Over \$100 million in future grants currently pending.
- Employee Recognition
  - New Employee of the Quarter program launched in 2024.
  - Received the GFOA Award for the 11th consecutive year.
  - Ken Hendricks graduated from APTA's Emerging Leaders program.
  - Joanne Parker graduated from WTS Executive Leadership program.
  - Ken Hendricks recognized by Mass Transit Magazine as one of the transit industry's top 40 professionals under 40.
  - Bryan Crowley appointed Vice Chair of APTA's IT Subcommittee.
  - SMART's Engineering team received the North Bay Business Journal's Excellence in Construction Award for Best North Bay Community Impact Project (Petaluma North Project).

General Manager Cumins shared a video highlighting SMART's 2024 Holiday Express, featuring a song by Engineer-Conductor Steve Lewis.

## Comments

General Manager Cumins noted a successful day with packed trains, Holiday Express riders, and people using the train for lunch outings, including a group that met annually at Brewster's. It was a positive experience with great interactions.

Director Coursey inquired about the opening of the Windsor Station, asking if it would avoid the system closure experienced the previous weekend. Aaron Parkes, Manager of Train Control Systems, confirmed that while a cutover would be needed around the Airport Boulevard crossing and current Northern terminus, it wouldn't be as complex as introducing a new station in the middle of the railroad.

Dani Sheehan recommended retaining General Manager Cumins following their evaluation.

5. Public Comment on Non-Agenda Items  
None

6. Consent
- a. Accept 2025 Board of Directors Meeting Schedule
  - b. Accept Monthly Ridership Report – November 2024
  - c. Approve Monthly Financial Status Report – October 2024
  - d. Accept the Fiscal Year 2024 Annual Investment Report
  - e. Authorize the General Manager to Execute Contract Amendment No. 5 with Nossaman, LLP for an amount of \$200,000 to provide specialized legal support on an as- needed basis.

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

**MOTION:** Director Pahre moved approval of Consent Agenda as presented. Director Garbarino second. The motion carried 8-0 (Directors Farac, Paulson, and Vice Chair Bagby were absent.)

7. Review and Accept SMART's Fiscal Year 2023-24 Annual Financial Report and Single Audit (Infor–  
*Presented by Chief Financial Officer, Heather McKillop*

Chief Financial Officer, Heather McKillop presented the annual financial report, audited by Eide Bailly. Minor edits were made, with no material changes. Board approval is required by December 31st to meet deadlines. Auditor Nathan Edelman presented a PowerPoint presentation. Highlights include:

- Audit scope focused on ensuring accuracy of financial statements (balance sheets, income statements, cash, payables, receivables, revenue) per governmental accounting standards.
- Auditors asked questions, reviewed documents, and confirmed if statements comply with accounting rules.
- Federal single audit conducted to ensure federal grants are used for their intended purpose.
- Internal control deficiencies, if identified, are reported as part of the audit, often due to accounting or grant fund errors.



- Auditors emphasized that agency management, led by Heather McKillop and the accounting team, is responsible for financial statements and internal controls.
- Highlighted Kathy Holt's contribution to the accounting department and the agency's receipt of the GFOA Certificate of Excellence for many years.
- Agency meets the criteria for an Annual Comprehensive Financial Report, adding transparency to financial statements.
- Audit opinion: unmodified (clean) opinion, confirming compliance with accounting rules, no internal control deficiencies, and no noncompliance with federal awards.
- No audit adjustments made; results met expectations.
- An unmodified report is the expected outcome, it requires the agency's hard work in preparing accounting records and financial statements.

**MOTION:** Director Rabbitt moved approval of Review and Accept SMART's Fiscal Year 2023-24 Annual Financial Report and Single Audit as presented. Director Sackett second. The motion carried 8-0 (Directors Farac, Paulson, and Vice Chair Bagby were absent.)

8. Fiscal Year 2024 Budget to Actual Comparison (*Information*) - Presented by Chief Financial Officer, Heather McKillop

Chief Financial Officer, Heather McKillop provided a presentation which is located on SMART's website. Highlights include:

- Passenger Actual Revenues and Expenditures
  - Collected \$99,418,984 Actual Revenues.
  - Expenditures totaled \$92,863,177.
  - Resulted in \$6,555,807 surplus in revenues over expenditures.
  - Surplus rolled into FY25, mainly for projects.
  - Funds allocated to ongoing projects as per budget amendments 1 through 8.
  - Surplus not considered additional money.
- Passenger revenues for FY 24 Year End
  - Sales tax 2.4% below budget.
  - Federal funds under budget by 9.5%
  - State funds under budget by 29.5%, due to uncompleted projects that prevented billing.
  - These funds are expected to be collected in FY 25 upon project completion.
  - Fare revenues increased by 21.6%.
  - Interest earnings were significantly higher, with an additional \$2-3 million than anticipated.
- Passenger Expenditures – FY 24 Year End
  - Administration and operations services and supplies were under budget by 17.3%.
  - Salaries and benefits for engineering and administration operations were close to budgeted amounts.
  - Engineering services and supplies were under budget by 73.8%, primarily due to lower spending on design pathway projects, which have moved to FY 25.

- Capital and state of good repair were under budget by 31.6%, mainly due to delayed vehicle deliveries (most arriving in July and August for FY 25) and project work on McInnis, Windsor, and Petaluma.
- Freight Revenues
  - State grant under budget by 20%, preserving funds for FY 25.
  - State Short Grant under budget by 70.9%, deferred capital projects due to lack of matching funds.
  - Freight movement fees were under budget by 14.6%, due to less traffic than expected.
  - Storage revenue exceeded projections by \$4,000, boosted by Caltrain trains.
- Freight Expenditures:
  - Salaries under budget by 8.9%, Didn't fill 0.5 FTE in FY 24
  - Services, supplies, and capital expenditures under budget, intentional to conserve funds for FY 25 operations.
  - Brazos Branch Phase 2 deferred due to funding constraints; timbers purchased in advance with a 9–12-month lead time for the project.
  - Additional timbers to be acquired this year for project completion.
  - Grade crossing work deferred to FY 25; completed earlier by Caltrans.

#### Comments

Director Colin inquired about the expiration of the State shoreline grant funds, asking if there was a deadline for expenditure. Chief Financial Officer McKillop responded that the funds must be used by the end of calendar year 2026. Although there were concerns about not being able to spend all the allocated funds due to matching funds not being available, she explained that the recent allocation of \$4 million for freight would provide more flexibility, allowing the use of freight movement fees to match the grant. There would be no penalties for not fully expending the grant; the remaining funds would simply expire.

9. Adopt a Resolution to Amend the Fiscal Year 2025 Adopted Budget to increase expenditure authority and modify the position authorization for Freight (Budget Amendment #9) – *Presented by Chief Financial Officer, Heather McKillop*

Chief Financial Officer, Heather McKillop provided a presentation which is located on SMART's website. Highlights include:

- Resolution No. 2024-40 proposed Budget Amendment No. 9 to modify position and expenditure authority.
- Position Authority
  - Shifted freight dispatching duties from transportation supervisors (passenger side) to freight employees.
  - Current freight staffing includes 4.5 utility workers, 3 filled and 1.5 vacant.
  - Requested to add 0.5 FTE, increasing total to 5 freight utility workers.
  - Created 2 positions combining freight utility work and dispatching duties.
  - Resulting staffing: 3 freight utility workers and 2 freight utility worker/dispatchers.
- Expenditure Authority Increase:
  - Additional 0.5 FTE to cost \$38,000 for January-June.

- Existing half FTE was authorized but not budgeted due to financial difficulties, requiring \$38,000 for budgeting.
- Total funding requirement: \$77,575 for January-June.
- Proposed 15% premium pay for dispatching duties (2-4 hours/week).
- Funding sources
  - \$61,784 from freight fund balance.
  - \$15,791 from services and supplies budget.
- Fund balance would be reduced to \$0 but expected state grant will replenish funds once received.

Comments

Director Pahre asked if two new freight positions were needed. General Manager Cumins clarified only half a position was being added, with enough work to justify it. Director Pahre then asked if the \$4 million state grant was at risk. Chief Financial Officer McKillop confirmed there had been no indication of issues and that the grant was still expected to be finalized by March, with confidence that it would proceed as planned.

Director Coursey asked about the \$60,000 fund balance. Chief Financial Officer McKillop explained it was part of last year's savings rolled over for contingencies. There are no other large reserves for the freight side, aside from the \$4 million coming, with some small emergency funds for specific situations.

Chair Lucan inquired about the approximately \$100,000 carryover and the fund balance. Chief Financial Officer McKillop confirmed that it was already included in Budget Amendment 8, with no unallocated funds (\$40,000) remaining.

Director Garbarino departed at 2:12 PM

**MOTION:** Director Rabbitt moved to Adopt a Resolution to Amend the Fiscal Year 2025 Adopted Budget to increase expenditure authority and modify the position authorization for Freight (Budget Amendment #9) as presented. Director Colin second. The Motion carried 7-0 (Directors Farac, Garbarino, Paulson, and Vice Chair Bagby were absent.)

10. Authorize the General Manager to execute Contract No. OP-SV-24-013 with GrayMar Environmental Services, LLC to provide as-needed removal, remediation, and disposal of hazardous materials, including biohazardous materials, on an emergency or non-emergency basis in an amount not-to-exceed \$227,595 – *Presented by Chief Operating Officer, Marc Bader*

Chief Operating Officer Marc Bader presented a contract for on-call biohazard and hazmat materials removal, remediation, and disposal services. These services are required for post-incident recovery and must be handled by a qualified, licensed contractor. SMART issued a request for proposal (RFP) OP-SV-24-013 and received three responses. After evaluation, GrayMar Environmental Services LLC was determined to be the best fit based on scoring criteria. The contract is for three years, with a not-to-exceed amount of \$227,595 and the option for two one-year extensions.

**MOTION:** Director Fudge moved to Authorize the General Manager to execute Contract No. OP-SV-24-013 with GrayMar Environmental Services, LLC to provide as-needed removal, remediation, and disposal of hazardous materials, including biohazardous materials, on an emergency or non-emergency basis in an amount not-to-exceed \$227,595 as presented. Director Coursey second. The Motion carried 7-0 (Directors Farac, Garbarino, Paulson, and Vice Chair Bagby were absent.)

11. Adoption of the Fiscal Year 2025 - 2030 Strategic Plan – *Presented by Senior Planner, Zoe Unruh*

Senior Planner, Zoe Unruh presented the final draft of the FY 2025-2030 Strategic Plan, outlining SMART's strategic direction, including its goals, objectives, and actions aligned with the organization's mission and vision. A PowerPoint presentation was provided and is also available on SMART's website. Highlights include:

- SMART Strategic Plan
- 2024 Strategic Planning Process
- 2024 Strategic Plan Timeline
- Summary of Revisions to Plan
- Final Draft Documents
- 2024 Strategic Plan Timeline
- Questions and Feedback

Comments

Director Coursey thanked the team and inquired about the difference between the strategic plan and the expenditure plan, as well as when a new expenditure plan might be created. General Manager Cumins explained that Step 1 was complete. After Measure Q ends in 2029, the Board will need to consider extending the sales tax and creating a new expenditure plan. Once approved, they will work with the community to determine what the new plan should entail.

Director Colin praised Ms. Unruh presentation and the SMART house diagram, highlighting the plan's clarity and the team's efforts. She expressed pride in the process and the next five years. General Manager Cumin acknowledged the planning team, Emily Betts, Zoe Unruh, and Owen Christofferson, for their key roles in bringing the plan together.

Director Fudge praised the plan for being responsive to board, staff, and public input. She was especially pleased with the recommendation to add solar to the facilities and commended the team for their work.

**MOTION:** Director Colin moved to Adopt the Fiscal Year 2025 – 2030 Strategic Plan as presented. Director Sackett second. The motion carried 7-0 (Directors Farac, Garbarino, Paulson, and Vice Chair Bagby were absent.)

Chair Lucan adjourned the Board to Closed Session at 2:42pm on the following:

12. Closed Session - Pursuant to California Government Code Section 54957; Public Employee Performance Evaluation; Title: General Manager

13. Report out of Closed Session

District Counsel Jessica Sutherland reported out of Closed Session at 3:53pm on the following:

Pursuant to California Government Code Section 54957; Public Employee Performance Evaluation; Title: General Manager  
*Report Out: Direction given to staff.*

14. Next Regular Meeting Board of Directors, January 15, 2025– 1:30 PM – 5401 Old Redwood Highway, 1st Floor, Petaluma, CA 94954

15. Adjournment – Meeting adjourned at 3:55pm.

Respectfully submitted,

Cassandra Perez  
Administrative Assistant

Approved on: \_\_\_\_\_



January 15, 2025

**Eric Lucan, Chair**  
Marin County Board of Supervisors

**Melanie Bagby, Vice Chair**  
Sonoma County Mayors' and Councilmembers Association

**Kate Colin**  
Transportation Authority of Marin

**Chris Coursey**  
Sonoma County Board of Supervisors

**Rachel Farac**  
Transportation Authority of Marin

**Debora Fudge**  
Sonoma County Mayors' and Councilmembers Association

**Patty Garbarino**  
Golden Gate Bridge,  
Highway/Transportation District

**Barbara Pahre**  
Golden Gate Bridge,  
Highway/Transportation District

**Gabe Paulson**  
Marin County Council of Mayors and Councilmembers

**David Rabbitt**  
Sonoma County Board of Supervisors

**Chris Rogers**  
Sonoma County Mayors' and Councilmembers Association

**Mary Sackett**  
Marin County Board of Supervisors

**Eddy Cumins**  
General Manager

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[www.SonomaMarinTrain.org](http://www.SonomaMarinTrain.org)

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

**SUBJECT:** Monthly Ridership Report – December 2024

Dear Board Members:

**RECOMMENDATIONS:** Accept Monthly Ridership Report – December 2024

**SUMMARY:**

We are presenting the monthly ridership report for activity for the month of December 2024. This report shows trends in ridership for SMART by tracking Total riders Average Weekday riders, and Average Saturday riders, Average Sunday/Holiday riders, as well as bicycles and mobility devices on board the trains. The report also includes total users counted on the SMART Pathway for the month, and total riders on the SMART Connect shuttles.

With the transition to the Automatic Passenger Counter (APC) in October 2022, SMART has a highly accurate method of tracking boardings and alightings at stations that does not depend on manual counts by the conductors. The APC system has been tested and validated at a 99% accuracy level and has been certified for passenger count use by the Federal Transit Administration (FTA). Both APC-based ridership and fare-based collection rider counts are shown in the attached report to give a full picture of ridership. APC-based ridership captures all riders, including riders with passes who neglect to tag on or off, riders who fail to activate their mobile app tickets, as well as categories of riders such as children under five years old.

This report compares the most recent month to the same month during the prior year, as is standard industry practice for tracking trends over time. These reports also note relevant details associated with fare program discount usage and trends in riders bringing bicycles onboard as well as riders who use mobility devices.

SMART's ridership data through December 2024 is posted on the SMART website (<https://sonomamarintrain.org/RidershipReports>).

**FISCAL IMPACT:** None

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

Respectfully,

  /s/    
Emily Betts  
Planning Manager

## DECEMBER 2024 SMART RIDERSHIP REPORT

December 2024 saw an increase over last month in average daily ridership, with total boardings down due to the 3-day system closure, rainy weather, and the holidays; average weekday ridership was 3,400, up 5% from November. Average Saturday and Sunday ridership increased by 21% and decreased by 5%, respectively, from the previous month. Total monthly ridership was 76,624, 29% over December 2023 and 32% over December 2019 (pre-COVID). Average Saturday ridership for December 2024 reached 26% over December 2023, and average Sunday ridership was 38% over December 2023.

As a reminder, SMART modified services in March 2020 due to the COVID-19 pandemic, with weekend service annulled and weekday service reduced to 16 trips. In May 2021, SMART added back 10 weekday trips. Saturday service was restored in May 2021, and Sunday service in May 2022. In June 2022, SMART added 10 additional weekday trips, and in October 2022, SMART added 2 additional midday trips, for a schedule of 38 trips per weekday. In May 2023, SMART added two evening trips on Friday and Saturday, known as the Starlighter. In October 2023, SMART suspended the Starlighter service but increased weekend service, running 16 trips total on both Saturday and Sunday. In August 2024, SMART added two additional round trips for a total of 42 trips each weekday.

The tables below present data for December 2023 and 2024 year-over-year, and the Fiscal Year to date (July-December). Ridership for the fiscal year to date (FY25) is tracking 28% over the same time period for FY24.

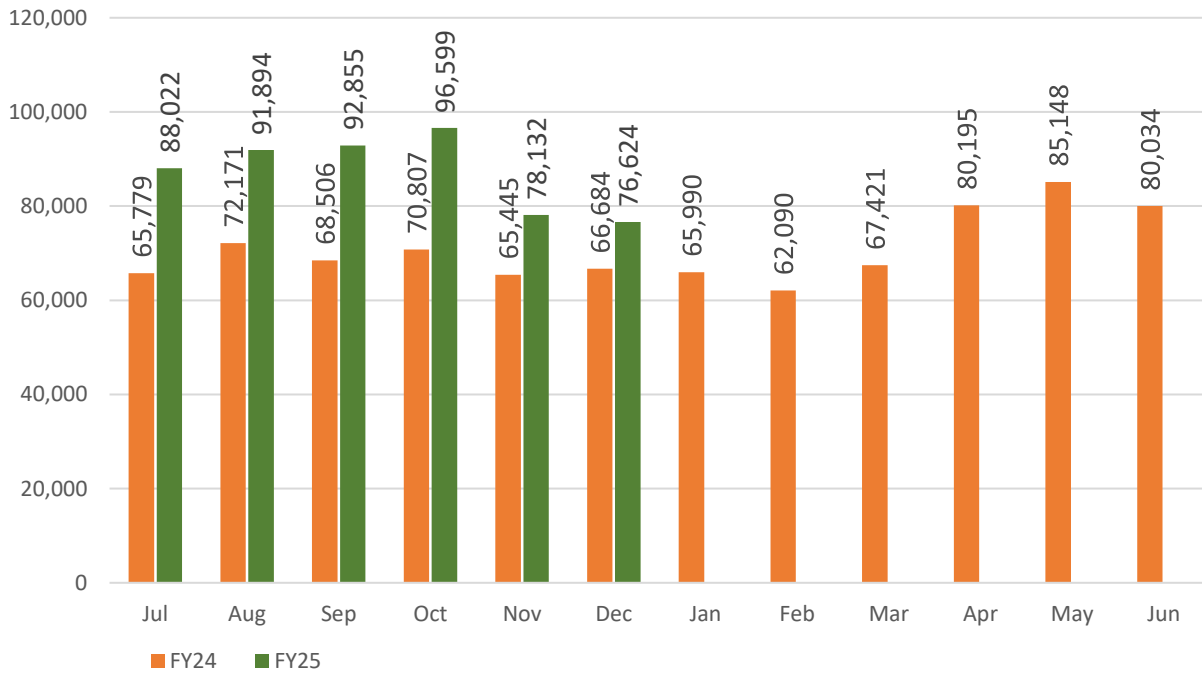
MONTHLY TOTALS YEAR-OVER-YEAR	DECEMBER 2023	DECEMBER 2024	% Change
<b>Ridership</b>	66,684	76,624	15%
<b>Fare Payments (Clipper + App Only)</b>	51,499	39,443	-23%
<b>Average Weekday Ridership</b>	2,641	3,400	29%
<b>Average Saturday Ridership</b>	1,679	2,117	26%
<b>Average Sunday Ridership</b>	1,093	1,511	38%
<b>Bicycles</b>	7,024	8,060	15%
<b>Mobility Devices</b>	110	127	15%

*\*Discrepancy between total ridership change and fare payments change due to launch of Free Fare program for youth and seniors on April 1.*

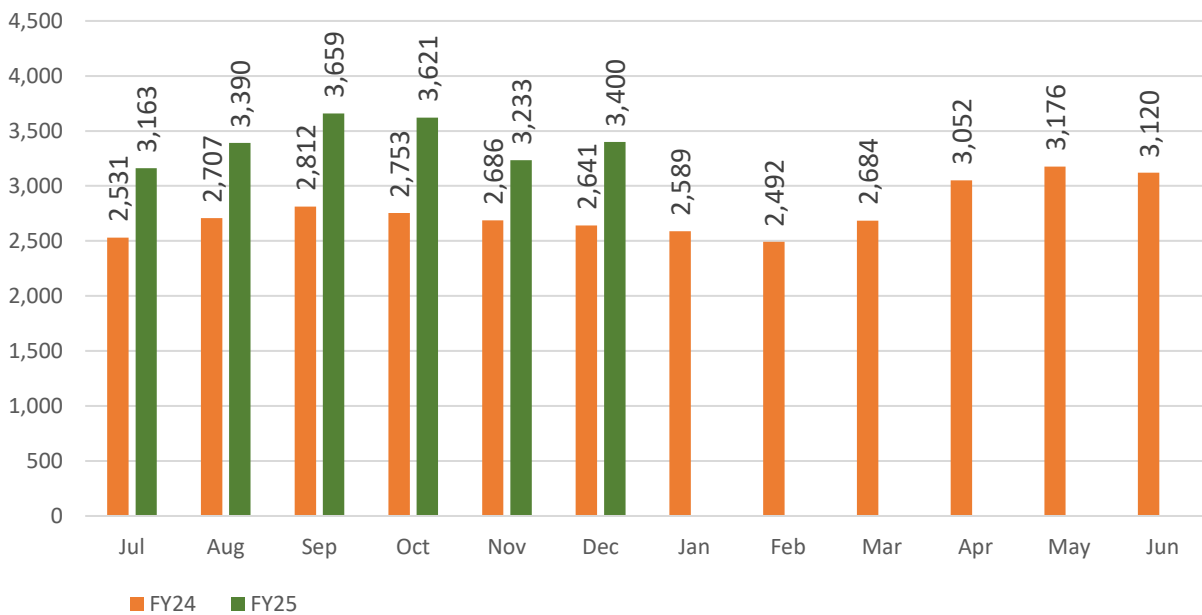
FISCAL YEAR (Jul - Dec)	Fiscal Year 2024	Fiscal Year 2025	% Change
<b>Ridership</b>	409,392	524,126	28%
<b>Fare Payments (Clipper + App Only)</b>	317,796	281,276	-11%
<b>Average Weekday Ridership</b>	2,690	3,413	27%
<b>Average Saturday Ridership</b>	1,428	1,936	36%
<b>Average Sunday Ridership</b>	1,153	1,749	52%
<b>Bicycles</b>	58,499	71,255	22%
<b>Mobility Devices</b>	949	1,291	36%

The following charts compare the average weekday ridership, average weekend ridership, boardings by day of week, and monthly totals for FY24-FY25.

SMART Monthly Ridership (FY24 - FY25)



SMART Average Weekday Ridership (FY24 - FY25)



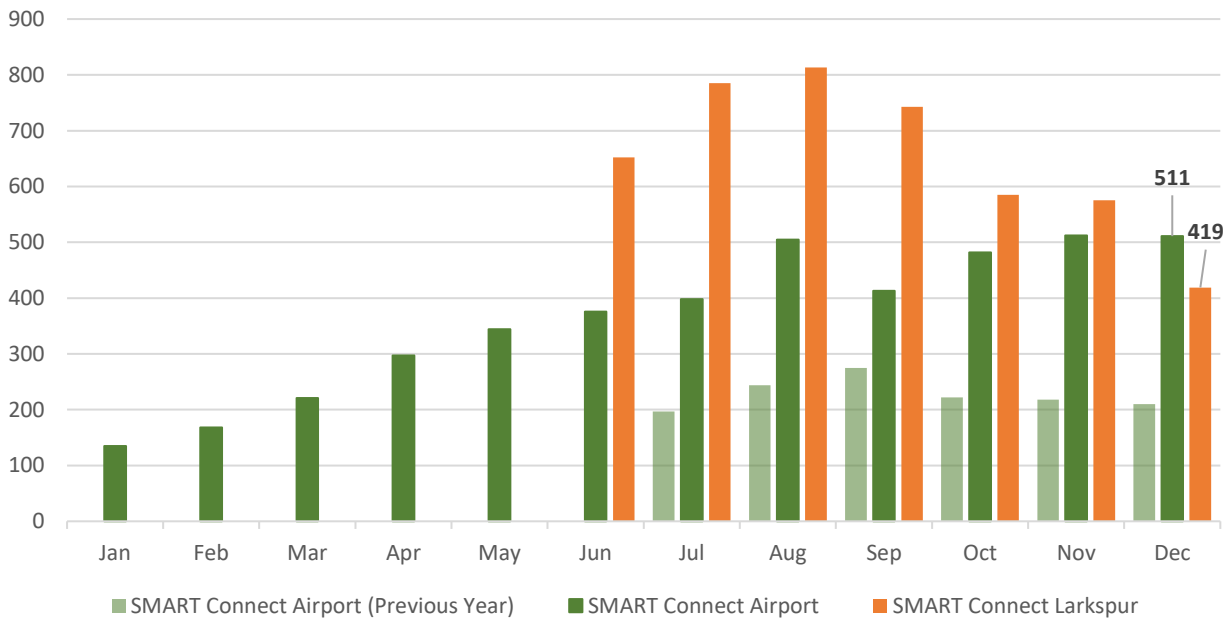


**SMART Connect Program**

SMART currently operates two on-demand shuttles, SMART Connect Airport and SMART Connect Larkspur. SMART Connect Airport, launched in June 2023, serves the SMART Sonoma County Airport station, the Charles M. Schultz Sonoma County Airport, and the surrounding area. SMART Connect Larkspur, launched in June 2024, serves the SMART Larkspur station, the Golden Gate Larkspur Ferry Terminal, and the surrounding Larkspur Landing area. The goal of the SMART Connect program is to facilitate first-and-last mile connections from SMART stations through the provision of a reliable on-demand shuttle that SMART riders can use for transit transfers, work and school commutes, and other destinations. SMART Connect uses microtransit software from The Routing Company called Ride Pingo, which allows users to pre-book trips or book a ride on-demand. Riders can also book by phone or walk on, space available.

Total December monthly ridership for the SMART Connect program was 930 riders.

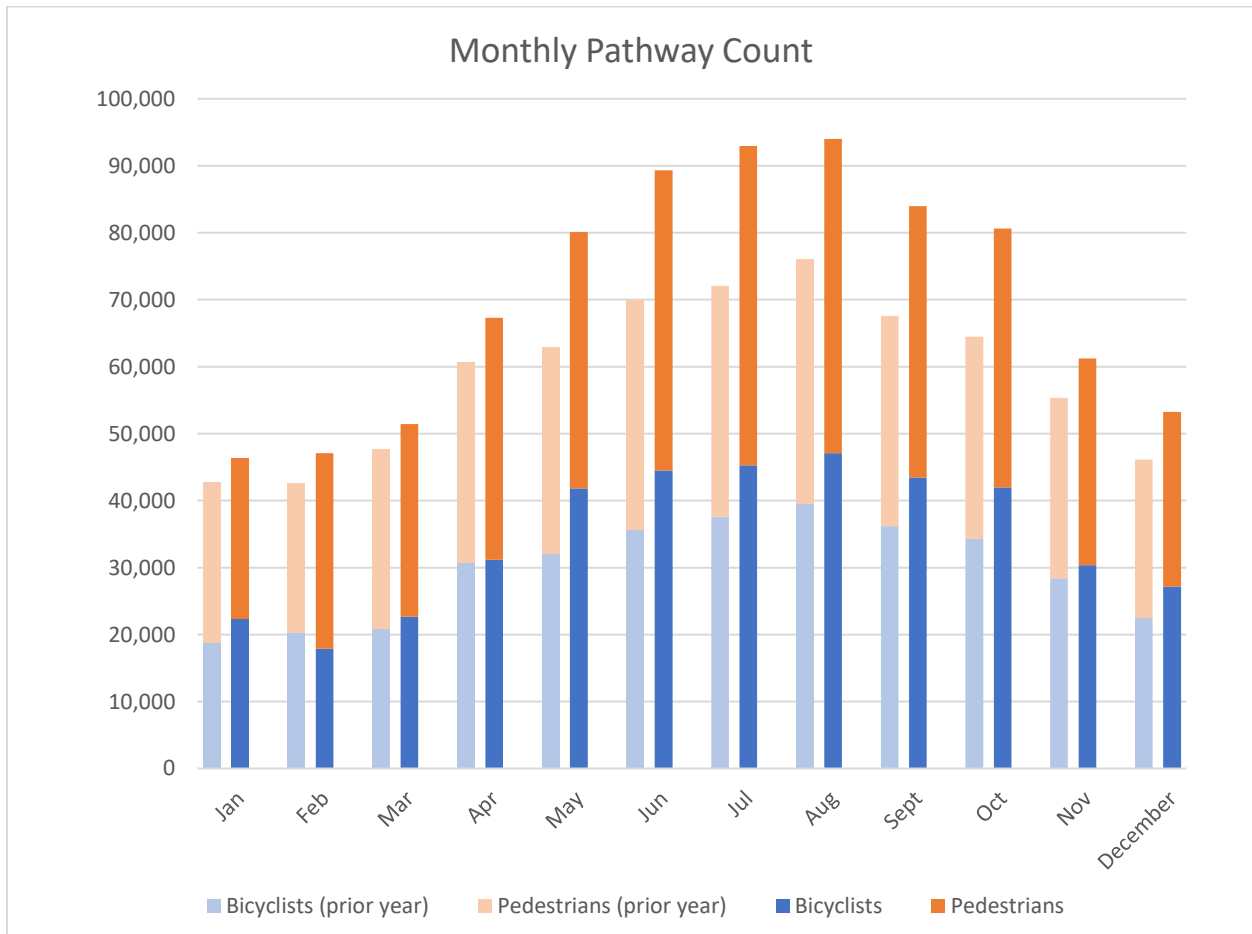
SMART Connect Monthly Ridership



**SMART Pathway**

SMART has installed 10 counters on the Pathway, with five in Marin County and five in Sonoma County. The counters differentiate between bicycles and pedestrians, and track data by time of day and day of the week. The counters cannot distinguish between unique users, but based on the estimated average trip length of 3 miles, and the average spacing between counters of 4.6 miles, the counts are considered an accurate estimate of monthly pathway usage. As additional pathway segments are constructed, counters will be placed on those segments to measure pathway usage. To date, count data has shown a fairly even split between pedestrians and bicyclists.

In December 2024, SMART counted 53,259 users on the pathway, which was an 15% increase over last year.





**Eric Lucan, Chair**  
Marin County Board of Supervisors

**Melanie Bagby, Vice Chair**  
Sonoma County Mayors' and Councilmembers Association

**Kate Colin**  
Transportation Authority of Marin

**Chris Coursey**  
Sonoma County Board of Supervisors

**Rachel Farac**  
Transportation Authority of Marin

**Debora Fudge**  
Sonoma County Mayors' and Councilmembers Association

**Patty Garbarino**  
Golden Gate Bridge,  
Highway/Transportation District

**Barbara Pahre**  
Golden Gate Bridge,  
Highway/Transportation District

**Gabe Paulson**  
Marin County Council of Mayors and Councilmembers

**David Rabbitt**  
Sonoma County Board of Supervisors

**Chris Rogers**  
Sonoma County Mayors' and Councilmembers Association

**Mary Sackett**  
Marin County Board of Supervisors

**Eddy Cumins**  
General Manager

5401 Old Redwood Highway  
Suite 200  
Petaluma, CA 94954  
Phone: 707-794-3330  
Fax: 707-794-3037  
[www.SonomaMarinTrain.org](http://www.SonomaMarinTrain.org)

January 15, 2025

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

**SUBJECT:** Monthly Financial Status

Dear Board Members:

**RECOMMENDATION:** Approve Monthly Financial Report

**SUMMARY:**

This report provides information for the first (5) five months of Fiscal Year (FY) 2025. This information includes the Board Adopted Budget and Budget Amendment #8.

Budgeted revenues and actual expenditures for both passenger rail and freight are provided in separate charts in the attached document. The actual column reflects revenues and expenditures for the first (5) five months of FY 2025 (July – November). In addition, for passenger rail, we have shown more detail regarding sales tax and fare revenues to show current and comparative information over the last five years (FY 2021 – FY 2025).

Information on the approved budget, actual expenditures, and remaining budget have been provided. Please keep in mind that expenditures do not always occur on a straight-line basis, many large expenditures such as debt service only occur on specific intervals.

We have also included information regarding SMART's investment policy, where our funds are being held, and how much is currently being held. In addition, we have shown the current obligations, reserves, and fund balance requirements for FY 2025.

Sincerely,

/s/  
Heather McKillop  
Chief Financial Officer

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



**MONTHLY FINANCIAL STATUS**

*November 2024*

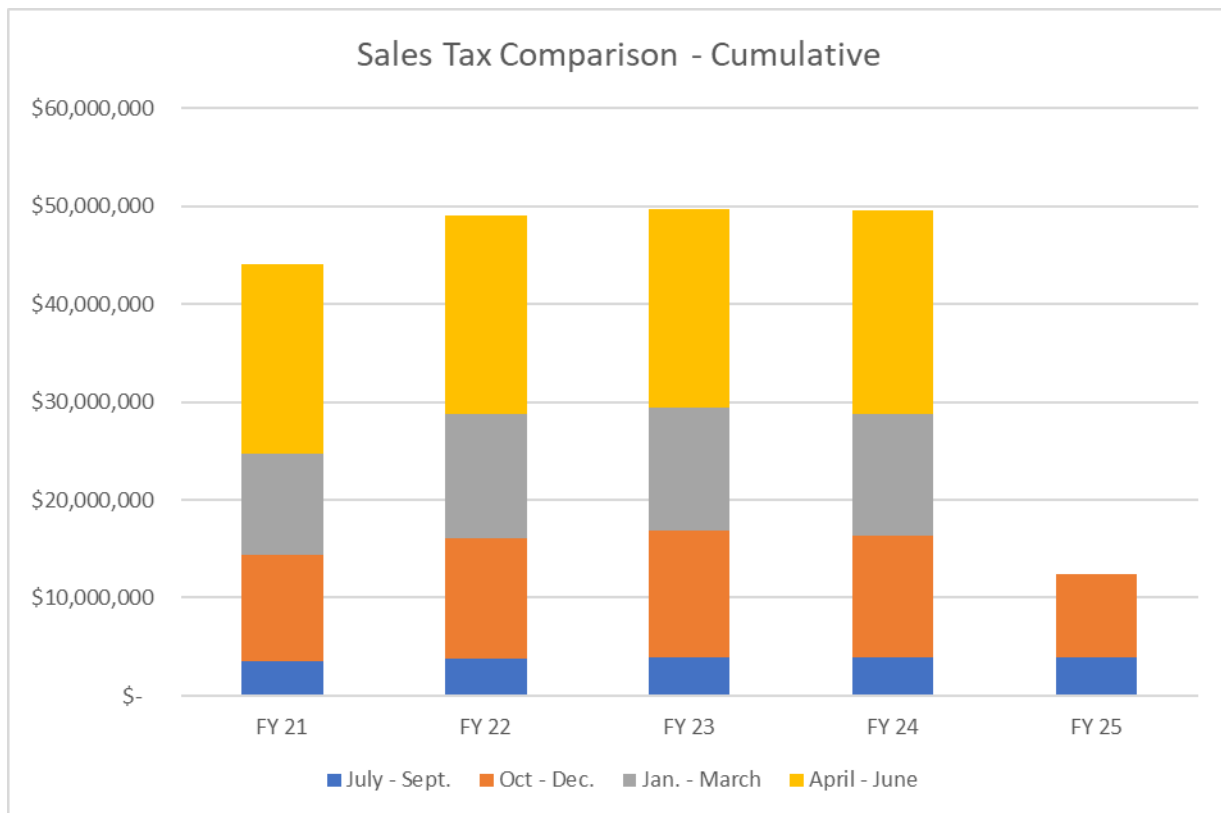
**PASSENGER REVENUES**

	<b>FY 2024-25 Approved Budget + Amendments #1 - #8</b>	<b>Actual</b>	<b>Amount Over / (Under) Budget</b>
<b>Revenues</b>			
<b>Passenger Rail</b>			
Sales/Use Taxes	\$ 50,426,000	\$ 12,355,144	\$ (38,070,856)
Interest and Lease Earnings	\$ 1,979,636	\$ 1,240,813	\$ (738,823)
Miscellaneous/ Other Revenue	\$ 295,921	\$ 158,744	\$ (137,177)
Passenger Fares	\$ 2,215,290	\$ 934,860	\$ (1,280,430)
Parking Fares	\$ 11,400	\$ 7,215	\$ (4,185)
Shuttle Fares	\$ 1,200	\$ 2,931	\$ 1,731
State Grants	\$ 54,679,307	\$ 46,138	\$ (54,633,169)
Federal Funds	\$ 8,332,676	\$ -	\$ (8,332,676)
Other Governments	\$ 3,305,915	\$ -	\$ (3,305,915)
<b>Passenger Rail</b>	<b>\$ 121,247,345</b>	<b>\$ 14,745,845</b>	<b>\$ (106,501,500)</b>

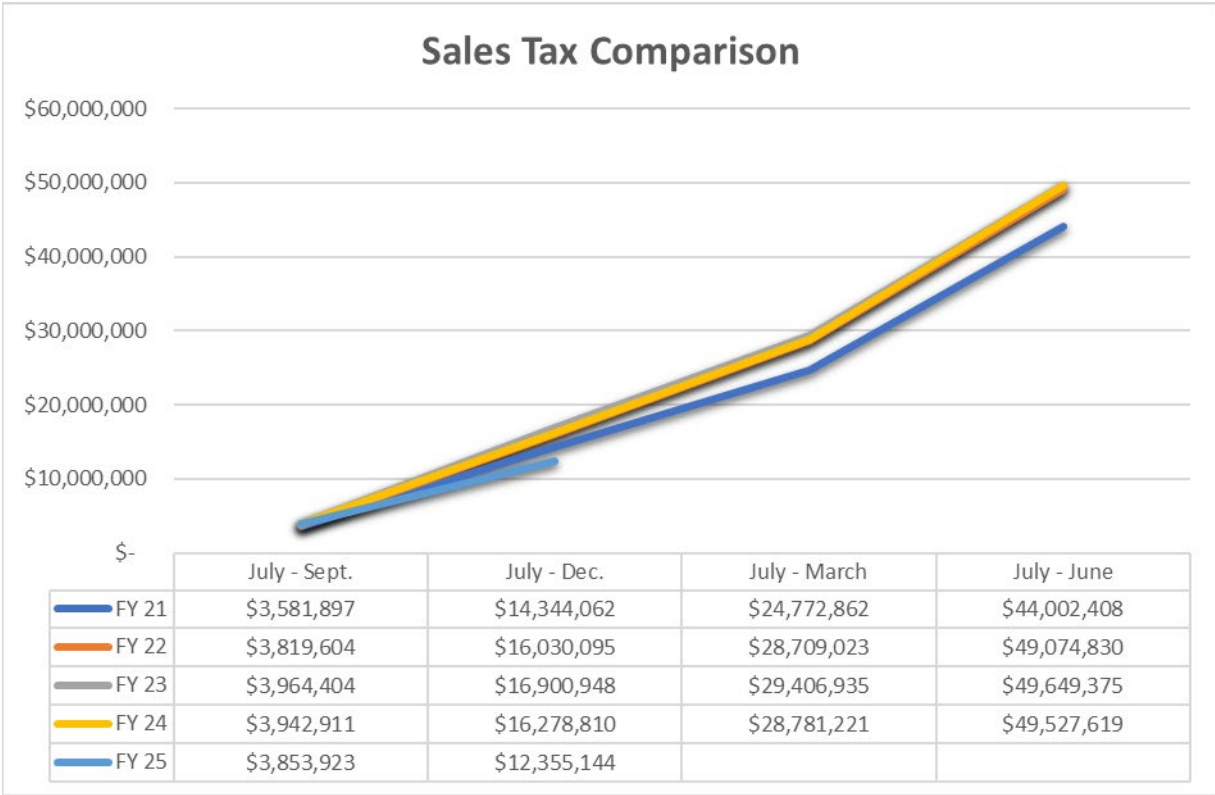
**Measure Q Sales Tax  
Fiscal Year (FY) 2025**

Time Period	July - Sept.	Oct - Dec.	Jan. - March	April - June
FY 25 Forecasted Sales Tax	\$ 3,900,000	\$ 12,500,000	\$ 12,600,000	\$ 21,426,000
Actual	\$ 3,853,923	\$ 8,501,221		
Difference	\$ (46,077)	\$ (3,998,779)	\$ (12,600,000)	\$ (21,426,000)

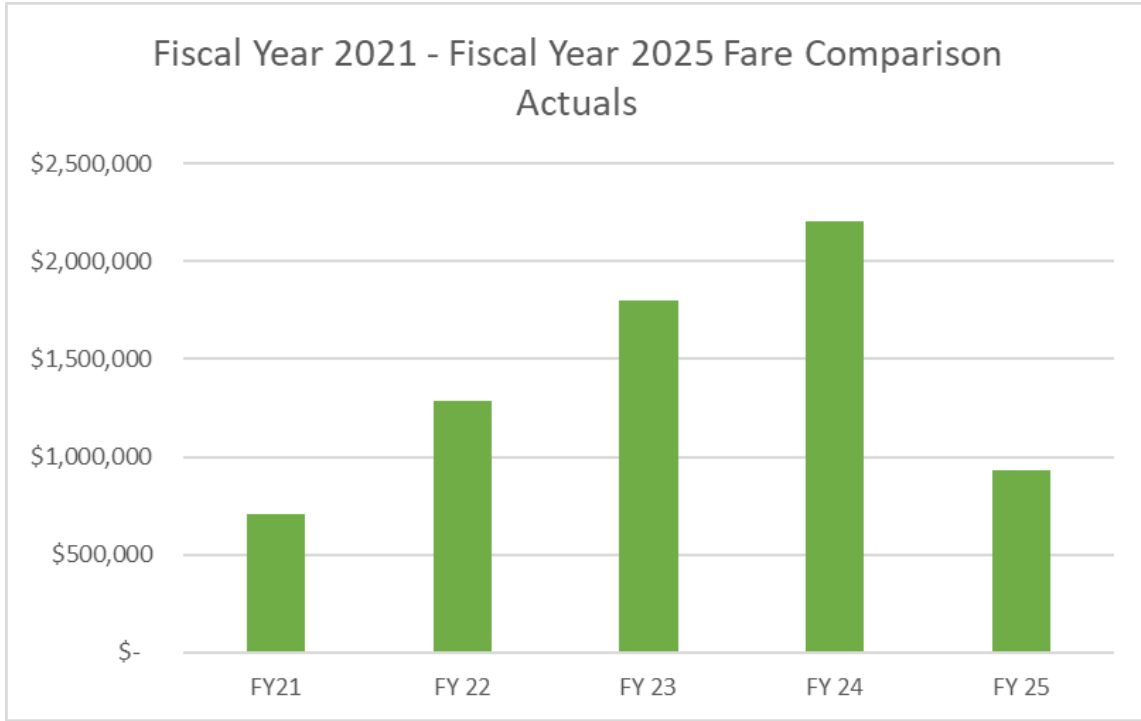
**Fiscal Year 2021-2025 Net Sales Tax Comparison  
(by Quarter)**



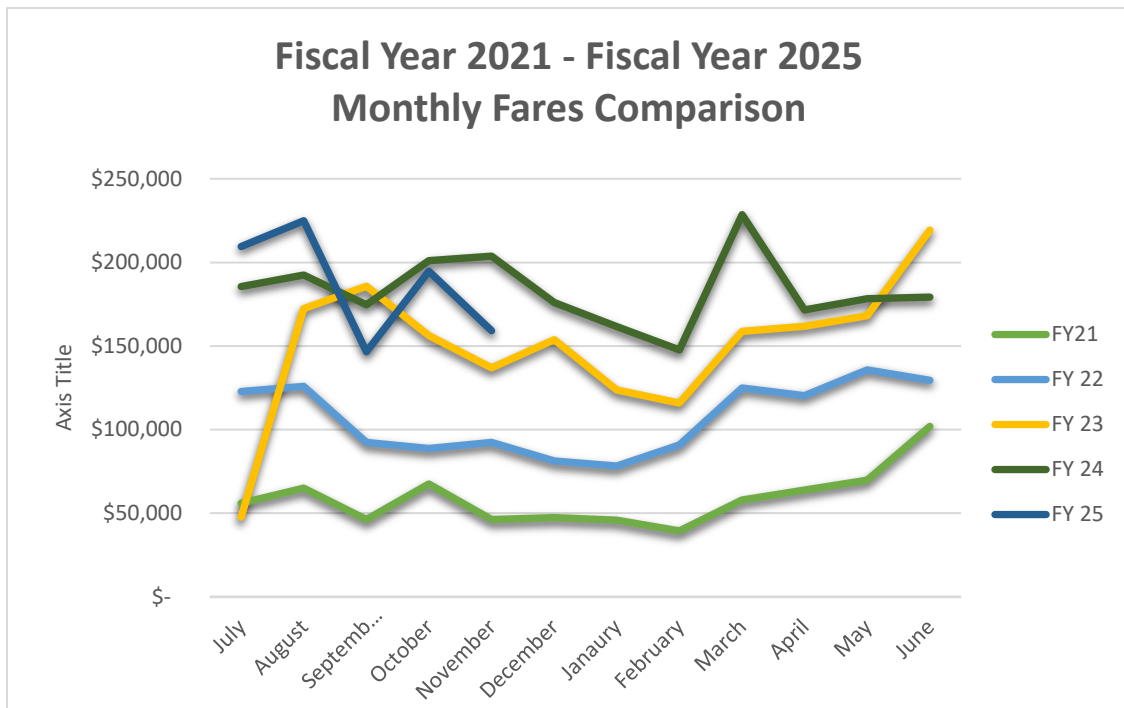
## Fiscal Year 2021-2025 Cumulative Sales Tax Comparison



**Fiscal Year 2021-2025 Fare Revenue Comparison**



**Fiscal Year 2021-2025 Monthly Fare Revenue Comparison**



## PASSENGER EXPENDITURES

	FY 2024-25 Approved Budget + Amendments #1 - #8	Actual	Amount Over / (Under) Budget
<b>Passenger Expenditures</b>			
<b>Administration</b>			
Salaries & Benefits	\$ 6,560,493	\$ 2,820,615	\$ (3,739,878)
Services & Supplies	\$ 11,187,386	\$ 2,858,625	\$ (8,328,761)
<b>Administration Subtotal</b>	<b>\$ 17,747,879</b>	<b>\$ 5,679,240</b>	<b>\$ (12,068,639)</b>
<b>Operations</b>			
Salaries & Benefits	\$ 18,782,237	\$ 7,863,988	\$ (10,918,249)
Services & Supplies	\$ 7,453,524	\$ 1,827,035	\$ (5,626,489)
<b>Operations Subtotal</b>	<b>\$ 26,235,761</b>	<b>\$ 9,691,023</b>	<b>\$ (16,544,738)</b>
<b>Capital</b>			
Salaries & Benefits	\$ 1,834,833	\$ 208,686	\$ (1,626,147)
Services & Supplies	\$ 4,157,170	\$ 446,559	\$ (3,710,611)
<b>Capital Subtotal</b>	<b>\$ 5,992,003</b>	<b>\$ 655,245</b>	<b>\$ (5,336,758)</b>
<b>Total Passenger Expenditures</b>	<b>\$ 49,975,643</b>	<b>\$ 16,025,508</b>	<b>\$ (33,950,135)</b>

<b>Passenger (Capitalized) Expenditures</b>			
Facilities	\$ 47,152,112	\$ 35,615,959	\$ (11,536,153)
Infrastructure	\$ 2,580,324	\$ 1,641,345	\$ (938,979)
Equipment	\$ 2,725,605	\$ 23,499	\$ (2,702,106)
Nonrevenue vehicles	\$ 1,037,906	\$ 400,875	\$ (637,031)
Revenue vehicles	\$ -		\$ -
Land	\$ 1,307,750	\$ 1,313,032	\$ 5,282
Other Governments	\$ 1,293,812	\$ 429,932	\$ (863,880)
<b>Total Passenger (Capitalized) Expenditures</b>	<b>\$ 56,097,510</b>	<b>\$ 39,424,642</b>	<b>\$ (16,672,868)</b>

<b>Passenger Expenditures + Capitalized</b>	<b>\$ 106,073,153</b>	<b>\$ 55,450,150</b>	<b>\$ (50,623,003)</b>
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## FREIGHT REVENUES

	FY 2024-25 Approved Budget + Amendments #1 - #8	Actual	Amount Over / (Under) Budget
<b>Revenues</b>			
<b>Freight</b>			
State Operating/ Capital Grant (42341)	\$ 393,549		\$ (393,549)
State Shortline Grant	\$ 399,776		\$ (399,776)
Freight Movement Fees	\$ 700,000	\$ 370,984	\$ (329,016)
Leases	\$ 270,000	\$ 71,790	\$ (198,210)
Freight Storage	\$ 104,800	\$ 52,522	\$ (52,278)
45(g) Tax Credit & Misc. Revenues	\$ 593,000	\$ 253,449	\$ (339,551)
<b>Freight</b>	<b>\$ 2,461,125</b>	<b>\$ 748,745</b>	<b>\$ 1,712,380</b>

## FREIGHT EXPENDITURES

	FY 2024-25 Approved Budget + Amendments #1 - #8	Actual	Amount Over / (Under) Budget
<b>Freight Expenditures</b>			
<b>Administration</b>			
Salaries & Benefits	\$ -	\$ -	\$ -
Services & Supplies	\$ -	\$ -	\$ -
<b>Administration Subtotal</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<b>Operations</b>			
Salaries & Benefits	\$ 870,099	\$ 336,249	\$ (533,850)
Services & Supplies	\$ 1,742,478	\$ 195,437	\$ (1,547,041)
<b>Operations Subtotal</b>	<b>\$ 2,612,577</b>	<b>\$ 531,686</b>	<b>\$ (2,080,891)</b>
<b>Capital</b>			
Salaries & Benefits	\$ -	\$ 293	\$ 293
Services & Supplies	\$ -	\$ 68,221	\$ 68,221
<b>Capital Subtotal</b>	<b>\$ -</b>	<b>\$ 68,514</b>	<b>\$ 68,514</b>
<b>Total Freight Expenditures</b>	<b>\$ 2,612,577</b>	<b>\$ 600,200</b>	<b>\$ (2,012,377)</b>

<b>Freight (Capitalized) Expenditures</b>			
Facilities		\$ -	\$ -
Infrastructure		\$ -	\$ -
Equipment		\$ -	\$ -
Nonrevenue vehicles		\$ -	\$ -
Revenue vehicles		\$ -	\$ -
Land		\$ -	\$ -
		\$ -	\$ -
<b>Total Freight (Capitalized) Expenditures</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

<b>Freight Expenditures + Capitalized</b>	<b>\$ 2,612,577</b>	<b>\$ 600,200</b>	<b>\$ (2,012,377)</b>
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## CAPITAL PROJECTS

Capital Project Report	Nov-24				
	Total Project Budget	Expended in Prior Fiscal Years	Budgeted in FY25	Remaining to be Budgeted in Future Years	Project Status
<b>PASSENGER RAIL PROJECTS</b>					
Extension: Windsor Civil	\$ 55,560,845	\$ 37,217,067	\$ 18,343,778	\$ -	Under construction.
Extension: Windsor Systems	\$ 18,102,142	\$ 8,392,880	\$ 9,709,262	\$ -	Under construction.
Extension: Windsor Pedestrian Undercrossing	\$ 4,300,000	\$ 2,127,124	\$ 2,172,876	\$ -	Under construction as part of the Windsor Extension project.
Town of Windsor Utility Crossing	\$ 407,100	\$ -	\$ 407,100	\$ -	Completed.
Extension: Healdsburg	\$ 268,278,000	\$ -	\$ 3,250,000	\$ 265,028,000	Preparation for progressive design-build process beginning early this fiscal year.
Station: Petaluma North	\$ 14,416,187	\$ 5,131,792	\$ 9,284,395	\$ -	Construction is in progress. Planned opening January 10, 2025
SGR: McDowell Grade Crossing	\$ 4,005,892	\$ 1,521,842	\$ 2,484,050	\$ -	Completed track work.
City of Petaluma North McDowell Paving Project	\$ 886,712	\$ 174,760	\$ 711,953	\$ -	Construction is in progress.
Pathway: Golf Course to Bellevue and Southpoint to Pengrove Construction	\$ 20,814,815	\$ 3,947,547	\$ 16,847,271	\$ 19,997	Construction is in progress.
Pathway: Design for 7 Segments in Marin and Sonoma Counties	\$ 3,936,755	\$ 2,408,679	\$ 1,304,423	\$ 223,653	Conducting engineering design and pursuing environmental permits to prepare for construction.
Pathway: Design for 5 Segments in Marin County	\$ 6,323,781	\$ 1,663,579	\$ 4,038,421	\$ 621,781	Conducting engineering design and pursuing environmental permits to prepare for construction.
Pathway: Construction for Mcinnis to Smith Ranch	\$ 4,841,108	\$ 1,645,339	\$ 3,073,668	\$ 122,101	Under construction. Grand opening January 25, 2025.
Pathway: Joe Rodota Trail	\$ 523,862	\$ 56,108	\$ 465,985	\$ 1,769	Construction planned to start in FY25.
City of Santa Rosa W. 3rd Street Grade Crossing Design	\$ 153,855	\$ 122,719	\$ 13,987	\$ 17,149	Currently in design.
Pathway: Hanna Ranch to Vintage	\$ 6,084,521	\$ -	\$ 200,000	\$ 5,884,521	Currently in design and permitting.
Pathway: Guerneville Rd to Airport Blvd Pathway Construction	\$ 14,618,729	\$ 17,325	\$ 200,000	\$ 14,401,404	Pursuing NEPA clearance.
Puerto Suello Pathway Design and Permitting	\$ 708,227	\$ -	\$ 708,227	\$ -	Request for Proposal (RFP) is being prepared for procurement.
<b>FREIGHT RAIL PROJECTS</b>					
Schellville Grade Crossing Repair	\$ 141,633	\$ -	\$ 141,633	\$ -	Completed in October.
Brazos Branch Bridge Repairs (Phase 2) - Sears Point Drainage	\$ 225,000	\$ -	\$ 225,000	\$ -	In design and procuring materials.
Brazos Branch Bridge Repairs (Phase 2) - Wingo (Sonoma Creek)	\$ 250,000	\$ -	\$ 250,000	\$ -	In design and procuring materials.
Brazos Branch Bridge Repairs (Phase 2) - Novato Creek	\$ 132,920	\$ -	\$ 132,920	\$ -	In design and procuring materials.

## INVESTMENTS

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

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

<u>Cash On Hand</u>	
Bank of Marin	\$ 26,512,001
Sonoma County Investment Pool *	\$ 67,229,551
<b>Total Cash on Hand</b>	<b>\$ 93,741,552</b>
<u>Reserves</u>	
Self-Insured	\$ 2,370,675
OPEB/ CalPERS	\$ 5,574,676
Operating Reserve	\$ 11,728,963
Capital Sinking Fund	\$ 11,317,250
Corridor Completion	\$ 7,000,000
<b>Total Reserves</b>	<b>\$ 37,991,564</b>
Cash Balance	\$ 55,749,988
Less: Current Encumbrances	\$ (46,919,164)
Balance	\$ 8,830,824
<b>Less: Estimated FY24 Year-end Fund Balance</b>	<b>\$ (53,421,712)</b>
<b>Remaining Balance</b>	<b>\$ (44,590,888)</b>
* Doesn't include trustee accounts	



# Contract Summary

Active contracts as of November 30, 2024

## PASSENGER RAIL

Contractor	Scope	Fiscal Year 24/25 Projected	Fiscal Year 24/25 Actuals
A.J. Janitorial Service	Janitorial Services for all Stations Roblar, ROC and Fulton	\$ 9,140	\$ 9,140
Alcohol & Drug Testing Services, LLC	DOT and FRA-regulated Drug and Alcohol Testing Services	\$ 45,000	\$ 26,258
Allen, Glaessner, Hazelwood LLP	Legal Services for Litigation and Rail Transit Issues	\$ 50,000	\$ -
Alliant Insurance Services	Insurance Brokerage and Risk Management Services	\$ 50,000	\$ -
American Rail Engineers Corporation	Railroad Bridge Inspections, Bridge Engineering, and Related Services	\$ 37,000	\$ 32,691
Asbury Environmental Services (AES)	Hazardous and Non-Hazardous Waste Removal and Disposal Services	\$ 2,575	\$ 2,275
Atlas CopCo Compressors, LLC	Air Compressor Maintenance Services	\$ 1,003	\$ 1,003
BKF Engineers	Design and Engineering Services for MUP Segments in Sonoma and Marin Counties	\$ 273,662	\$ 29,772
Bolt Staffing Service, Inc.	Temporary Staffing Services	\$ 45,000	\$ 33,479
Bright Star Security, Inc.	Security Patrol at SMART's Cal Park Tunnel	\$ 5,718	\$ 4,765
Bureau Veritas Technical Assessments, LLC	Equal Access and ADA Consulting	\$ 25,000	\$ -
Cal Interpreting & Translations	Real Time Translation and Related Services	\$ 13,000	\$ -
Cinquini & Passarino, Inc.	Right-of-Way Land Surveying and Related Services	\$ 7,773	\$ -
City Towel & Dust Services, Inc. DBA Sunset Linen & Uniform	Laundrying, Pressing, and Related Services for SMART-Owned Uniforms	\$ 21,723	\$ 394
Clean Solutions Services Inc.	Janitorial and Custodial Services for SMART's Stations, Offices, and Park & Ride Lots	\$ 137,885	\$ 34,005
Code 3 Entertainment Services, LLC	Microtransit Operations and Maintenance Services	\$ 567,433	\$ 199,457
Construction Testing Services	Construction Materials Testing Support Services	\$ 189,625	\$ 333
Craft & Commerce	Marketing and Community Outreach Services and Support	\$ 93,000	\$ -
CSW/Stuber-Stroeh Engineering Group	Design and Engineering Services for 5 MUP Segments in Marin County	\$ 683,104	\$ 8,586
CSW/Stuber-Stroeh Engineering Group	Design and Engineering for Petaluma North Station, N. McDowell Grade Crossing, Segments 2 & 3 Pathway	\$ 382,800	\$ 180,420
Data Ticket	Processing Parking Fines for Illegal Parking	\$ 1,800	\$ 600
Dr. Lance O'Connor	Occupational Health Screening Services	\$ 5,000	\$ -
Dudek	Biological and Cultural Resource Monitoring	\$ 195,000	\$ -
Dunnigan Psychological & Threat Assessments, LLC	Employment-Related Psychological Evaluation Services	\$ 25,000	\$ 4,800
Eide Bailly LLP	Financial Audit Services	\$ 61,110	\$ 34,000
eLock Technologies, LLC	Station Bike Lockers - Ongoing Maintenance and Support Services	\$ 11,850	\$ 6,165
Federated Indians of Graton Rancheria	Tribal Monitoring for Ground-Disturbing Activities - SoCo Pathway	\$ 20,000	\$ 6,097
Fehr & Peers	Comprehensive Quality of Life and Impact Assessment	\$ 413,113	\$ 10,275
Foster & Foster (formerly Demsey, Filliger, & Associates, LLC)	GASB Pension Compliance Services (Actuarial Calculations)	\$ 1,250	\$ -
Gary D. Nelson Associates, Inc.	Temporary Staffing and Placement Services	\$ 55,000	\$ 1,968
George Hills Company, Inc.	Third Party Claims Administration Services	\$ 30,000	\$ 695
Ghilotti Bros, Inc.	Construction of NMP McInnis to Smith Ranch	\$ 1,785,346	\$ 1,673,691
Golden Five, LLC	Microsoft 365 Consulting Services	\$ 54,389	\$ 17,850
Granicus, Inc.	Media Streaming and Internet Broadcasting Services	\$ 13,503	\$ 13,503
Hanford A.R.C.	Implementation and Monitoring, San Rafael Creek Riparian Enhancement Project	\$ 29,841	\$ 8,860
Hanford A.R.C.	Maintenance and Monitoring the the Las Gallinas Creek Watershed Riparian Enhancement Planting	\$ 17,425	\$ 5,722
Hanson Bridgett LLP	Legal Services - Union Negotiations	\$ 120,000	\$ 1,545
Hunt and Sons, Inc.	Bulk Delivery of Motor Oil (15W40)	\$ 8,213	\$ 6,435
Integrated Security Controls, Inc.	On-Call CCTV Maintenance Support	\$ 2,653	\$ -
Intelligent Technology Solutions, LLC	Maximo SaaS Development, Implementation, and Related Services	\$ 75,000	\$ -
Khouri Consulting, LLC	California State Legislative and Advocacy Services	\$ 120,000	\$ 40,000
Lewis, Brisbois, Bisgaard & Smith LLP	Various legal services related to transit	\$ 65,000	\$ 483
Lisa Wolper, LCSW, SAP	Substance Abuse Professional Services	\$ 1,400	\$ -
Masabi LLC	SMART Mobile Ticketing Pilot Project	\$ 30,000	\$ 25,000
MaxAccel	FRA Regulatory Compliance Software	\$ 31,664	\$ 14,689
MaxAccel	Learning Management System	\$ 15,832	\$ 4,980
Mission Linen Supply	Employee Uniform Rentals	\$ 24,077	\$ 15,539
Mission Linen Supply	Laundry and Dry Cleaning for SMART-Owned Uniforms	\$ 9,025	\$ 700
Modern Railway Systems, Inc.	Monitoring and Maintenance SMART's Communications Network and TDX System	\$ 15,726	\$ 15,664
Modern Railway Systems, Inc.	Design and Construction of Systems Improvements for the Windsor Extension Project	\$ 5,350,845	\$ 3,885,228
Modern Railway Systems, Inc.	Real Time Train Arrival Digital Signage for Train Platforms	\$ 452,877	\$ 59,625
MuniServices, LLC	Sales Tax Recovery Services	\$ 30,000	\$ 8,458
North Bay Bottling (Alex Ruiz Sr.)	Drinking Water Delivery Service	\$ 3,260	\$ 837

Contractor	Scope	Fiscal Year 24/25	Fiscal Year 24/25
		Projected	Actuals
North Bay Petroleum	Provision of Fuel for DMUs	\$ 1,100,000	\$ 610,076
Nossaman LLP	Litigation, Rail Transit Issues, and other related legal services	\$ 180,000	\$ 100,307
Occupational Health Centers of CA	Pre-Employment Evaluation Services	\$ 35,000	\$ 3,580
Oracle	Fusion ERP System	\$ 329,413	\$ -
Pape Machinery, Inc.	Equipment Repair and Related Services	\$ 7,507	\$ -
Parodi Investigative Solutions	Pre-Employment Background Investigation Services	\$ 25,000	\$ 5,500
PFM Financial Advisors, LLC	Financial Advisory Services	\$ 5,000	\$ -
Pitney Bowes, Inc.	Lease for Mail Machine	\$ 701	\$ 183
Pivotal Vision, LLC	Security Software Licensing / Rail Network	\$ 2,750	\$ 2,750
Portola Systems, Inc.	SMART Station Network Maintenance and Configuration Services	\$ 271,543	\$ 222,648
Precision Wireless	Tech Support and Maintenance for Land Mobile Radio	\$ 44,932	\$ 4,054
Precision Wireless	Installation of Lightbar and Related Equipment	\$ 2,712	\$ -
RSE Corporation	Civil Engineering, Design, and Land Surveying	\$ 42,500	\$ -
Sierra-Cedar, LLC	Oracle Enterprise Resources Planning Software	\$ 152,000	\$ 33,012
Sonoma County Fleet Operation Division	Non-Revenue Fleet Vehicle Installation, Maintenance, and Repair Services	\$ 65,000	\$ 29,436
SPTJ Consulting, Inc.	Network Monitoring and Support Services	\$ 202,419	\$ 67,473
Square Signs LLC dba Front Signs	System-Wide Pathway Wayfinding Signage	\$ 599,447	\$ -
Stacy and Witbeck, Inc.	Design/Build Construction of Civil, Track & Structures of Windsor Extension	\$ 17,936,174	\$ 15,655,075
Stacy and Witbeck/Ghilotti Bros, A Joint Venture	Construction of Petaluma North Station Platform, Grade Crossing Reconstruction, and Pathway	\$ 22,871,960	\$ 15,934,722
Stacy and Witbeck/Ghilotti Bros, A Joint Venture	Paving Work for the City of Petaluma as Part of the Petaluma North Project	\$ 582,187	\$ 60,540
Sue Evans	Title Investigation Support Services	\$ 19,493	\$ 910
Survival CPR & First Aid, LLC	Active Shooter Training and Related Services	\$ 2,970	\$ 2,079
Survival CPR & First Aid, LLC	First Aid and CPR Training, AED Compliance Program Management	\$ 11,300	\$ 3,168
TDG Engineering, Inc.	Wayfinding System Planning and Design for the SMART Pathway	\$ 21,592	\$ 21,349
The Routing Company	Furnish, Implement, and Maintain a Microtransit Software Platform	\$ 12,000	\$ 7,109
The Routing Company	Social Media Campaign for SMART Connect	\$ 6,200	\$ 6,200
Tom Hehir dba Aspire Consulting	Leadership and Development Workshop Services	\$ 24,266	\$ -
Toshiba America Business Solutions, Inc.	Printer Lease and Maintenance Agreement No 450-046953-000	\$ 32,494	\$ -
TRC Engineers, Inc.	Construction Management Support Services	\$ 413,197	\$ 119,515
Triangle Properties, Inc.	SoCo Pathway Riparian Enhancement Implementation and Monitoring	\$ 39,080	\$ 21,150
Triangle Properties, Inc.	Helen Putnam Riparian Mitigation	\$ 523,270	\$ 189,640
Triangle Properties, Inc.	Windsor Creek Riparian Enhancement	\$ 41,932	\$ 3,701
United Construction Management Corp	Construction Management Support Services	\$ 160,083	\$ 32,525
Urban Transportation Associates	Onboard Automatic Passenger Counter System Purchase, Install, and Software Implementation and Training	\$ 18,178	\$ 18,178
Van Scoyoc Associates	Federal Lobbying Services	\$ 30,000	\$ 25,000
Vista Broadband Networks, Inc.	Broadband Services	\$ 9,000	\$ 3,750
Ward Levy Appraisal Group, Inc.	Real Estate Appraisals and Related Services	\$ 4,950	\$ -
Web Master Designs, LLC	As-Needed Monitoring, Management, and Support Services for Public-Facing Websites	\$ 5,580	\$ 1,463
WRA, Inc.	As-Needed Environmental Consulting Services	\$ 78,900	\$ 56,170
	<b>TOTAL</b>	<b>\$ 57,617,232</b>	<b>\$ 39,658,110</b>

**FREIGHT RAIL**

Contractor	Scope	Fiscal Year 24/25	Fiscal Year 24/25
		Projected	Actuals
Freight Rail Tracking Software	Freight Rail Tracking Software	\$ 6,000	\$ 1,228
GATX Rail Locomotive Group, LLC	Freight Locomotive Lease Agreement	\$ 48,200	\$ 17,553
HCI Systems, Inc.	Fire Equipment Inspection and Certification	\$ 354	\$ -
Hue & Cry, Inc.	Security System at Schellville Depot	\$ 994	\$ 249
Lambertus J. Versteegen dba South West Locomotive Repair	Locomotive Maintenance and Repair	\$ 18,984	\$ 18,984
Mickelson & Company, LLC	45G Tax Credit Advisory Services	\$ 15,035	\$ 15,035
North Bay Petroleum	Provision of Fuel for Freight Locomotives	\$ 90,000	\$ 27,100
Summit Signal, Inc.	Inspection, Testing, and Maintenance Services for Signal Equipment Along Brazos Branch	\$ 40,542	\$ 33,785
Summit Signal, Inc.	Freight Call-Out Maintenance and Repair Services	\$ 6,565	\$ 4,419
Summit Signal, Inc.	Signal and Crossing Support Services for Planned Caltrans Paving Project along Hwy 12/121	\$ 4,060	\$ -
Wine Country Sanitary, Inc.	Portable Toilet Rental and Maintenance	\$ 1,600	\$ 394
	<b>TOTAL</b>	<b>\$ 232,334</b>	<b>\$ 118,747</b>

Actuals-To-Date include invoices that have been approved, but may not have been processed in SMART's Financial System, as of November 30, 2024



**Eric Lucan, Chair**  
Marin County Board of Supervisors

**Melanie Bagby, Vice Chair**  
Sonoma County Mayors' and Councilmembers Association

**Kate Colin**  
Transportation Authority of Marin

**Chris Coursey**  
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General Manager

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[www.SonomaMarinTrain.org](http://www.SonomaMarinTrain.org)

January 15, 2025

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

**SUBJECT:** Approve Contract Amendment No. 3 to Contract No. OP-SV-20-007 with Nick Barbieri Trucking, LLC DBA Redwood Coast Fuels - North Bay Petroleum

Dear Board Members:

**RECOMMENDATION:**

Authorize the General Manager to execute Contract Amendment No. 3 to Contract No. OP-SV-20-007 with Nick Barbieri Trucking, LLC DBA Redwood Coast Fuels - North Bay Petroleum to extend the current fuel delivery Service Agreement for one additional year utilizing the final optional renewal available in the contract and to increase the not-to-exceed amount by \$1,500,000 for a total not-to-exceed amount of \$7,465,000.

**SUMMARY:**

Nick Barbieri Trucking, LLC DBA Redwood Coast Fuels – North Bay Petroleum was the lowest responsive responsible bidder in response to the Invitation for Bid issued in late 2020 and was subsequently awarded the Service Agreement at the February 3, 2021, Board Meeting. On January 4, 2023, and February 21, 2024, the Board of Directors approved one-year extensions to the contract for additional years using the first and second available option in the Agreement. Nick Barbieri Trucking, LLC DBA Redwood Coast Fuels – North Bay Petroleum has continued to be a reliable and consistent partner these past four years and as such, SMART’s Vehicle Maintenance team is requesting to extend the Agreement for one last year utilizing the final optional period available in the contract.

Staff recommends authorizing the General Manager to execute Contract Amendment No. 3 to Contract No. OP-SV-20-007 with Nick Barbieri Trucking, LLC DBA Redwood Coast Fuels - North Bay Petroleum to extend the current fuel delivery Service Agreement for one additional year utilizing the final optional renewal available in the contract and to increase the not-to-exceed amount by \$1,500,000 for a total not-to-exceed amount of \$7,465,000.

**FISCAL IMPACT:** Funds for this Amendment are included in the Fiscal Year 2024-25 Operations Budget and assumed in the subsequent year.

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

Sincerely,

    /s/      
Marc Bader  
Chief Operations Officer

Attachment(s): Nick Barbieri Trucking, LLC DBA Redwood Coast Fuels - North Bay Petroleum Contract Amendment No. 3



**THIRD AMENDMENT TO THE SERVICE AGREEMENT BETWEEN  
THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT  
AND NICK BARBIERI TRUCKING, LLC  
DBA REDWOOD COAST FUELS – NORTH BAY PETROLEUM**

This Third Amendment dated as of January 15, 2025 (the “Third Amendment”), to the Service Agreement by and between Nick Barbieri Trucking, LLC dba Redwood Coast Fuels – North Bay Petroleum (hereinafter referred to as “Service Provider”) and the Sonoma-Marin Area Rail Transit District (hereinafter referred to as “SMART”), dated as of March 1, 2021 (the “Original Agreement,” as amended and supplemented by the First Amendment, Second Amendment, and now this Third Amendment, the “Agreement”).

**RECITALS**

WHEREAS, Service Provider and SMART previously entered the Original Agreement on March 1, 2021, to supply diesel fuel and diesel exhaust fluid and to deliver those materials in the manner described therein; and

WHEREAS, SMART and Service Provider previously entered into the First Amendment to the Agreement dated January 4, 2023, which increased the not-to-exceed amount of the Agreement and extended the term of the Agreement utilizing the first available option in the Agreement, and

WHEREAS, SMART and Service Provider previously entered into the Second Amendment to the Agreement dated February 21, 2024, which extended the term of the Agreement for one year utilizing the second available option, increased the not-to-exceed amount by \$1,800,000.00, updated the Service Provider’s Key Personnel, and updated the contact information within the Exhibit A Scope of Work & Timeline;

WHEREAS, SMART and Service Provider desires to amend the Agreement to extend the term for one additional year utilizing the final option available in the Agreement, increase the Not-to-Exceed amount by \$1,500,000.00 for a new Not-to-Exceed amount of \$7,465,000.00, and update SMART’s Key Personnel;

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

*THIS SPACE INTENTIONALLY LEFT BLANK*

## AGREEMENT

1. **“ARTICLE 5. PAYMENT”**. Article 5, Section 5.02 of the Agreement is hereby deleted and replaced with the following:

Service Provider shall be paid in accordance with the rates established in Exhibit B; provided, however, that total payments to Service Provider shall not exceed \$7,465,000.00 without the prior written approval of SMART. Service Provider shall submit its invoices in arrears on a monthly basis in a form approved by the Chief Financial Officer. Each invoice shall provide the following itemized information for each fueling service that took place in the previous month for each location: (i) the fuel type provided; (ii) the number of gallons delivered, (iii) the daily OPIS rate (iv) the contract overhead & margin rate (fixed-fee markup), (v) the total fuel product cost, (vi) the name and location of the supplier (vii) the time in quarter hours to perform the wet-hose fueling service and corresponding labor rate, and (viii) all applicable taxes and fees. SMART is exempt from the payment of Federal and State Excise and Transportation taxes. SMART does not reimburse Service Provider for travel time.

2. **“ARTICLE 6. TERM OF AGREEMENT”**. Article 6, Section 6.01, is hereby deleted and replaced in its entirety with the following:

“The term of this Agreement shall remain in effect through March 1, 2026, unless terminated earlier in accordance with the provisions of **Article 7.**”

3. **“ARTICLE 15. METHOD AND PLACE OF GIVING NOTICE, SUBMITTING INVOICES AND MAKING PAYMENTS”** is hereby amended to replace the name and contact information for SMART’s Superintendent of Vehicle Maintenance/SMART’s Project Manager. All references in the Agreement to the Superintendent Of Vehicle Maintenance/ Project Manager shall hereafter refer to the individual named below:

If to SMART Project Manager:	Sonoma-Marin Area Rail Transit District Attn: Marc Bader Chief Operating Officer 3748 Regional Parkway Santa Rosa, CA 95403 <a href="mailto:mbader@sonomamarintrain.org">mbader@sonomamarintrain.org</a> 707-890-8613 707-981-1044
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4. Except to the extent the Agreement is specifically amended or supplemented hereby, the Agreement, together with all supplements, amendments and exhibits thereto is, and shall continue to be, in full force and effect as originally executed, and nothing contained herein shall, or shall be construed to, modify, invalidate, or otherwise affect any provision of the Agreement.

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

**SONOMA-MARIN AREA RAIL TRANSIT DISTRICT**

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Eddy Cumins, General Manager

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

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Walt Turner, Operations Manager

**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_

By \_\_\_\_\_  
District Counsel



**Eric Lucan, Chair**  
Marin County Board of Supervisors

**Melanie Bagby, Vice Chair**  
Sonoma County Mayors' and  
Councilmembers Association

**Kate Colin**  
Transportation Authority of Marin

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Marin County Board of Supervisors

**Eddy Cumins**  
General Manager

January 15, 2025

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

**SUBJECT:** Citizens Oversight Committee (COC) Selection Process

Dear Board Members:

**RECOMMENDATIONS:**  
Establish Ad Hoc Committee to review applications and recommend appointments to the COC

**SUMMARY:**  
On January 6, 2025, staff posted the application on the SMART website and advertised four (4) upcoming positions via a press release, email blast, and social media. SMART will accept applications through February 3, 2025.

Three (3) positions shall fulfill a 3-year term and one (1) position will fill the vacancy and complete the appointed term to expire in March 2026.

Staff recommends the Board of Directors establish an Ad Hoc Committee to review applications the week of February 3<sup>rd</sup> and present recommended appointments to the Board on February 19, 2025.

Very truly yours,

/s/  
Eddy Cumins  
General Manager

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Fax: 707-794-3037  
[www.SonomaMarinTrain.org](http://www.SonomaMarinTrain.org)



January 15, 2025

**Eric Lucan, Chair**  
Marin County Board of Supervisors

**Melanie Bagby, Vice Chair**  
Sonoma County Mayors' and Councilmembers Association

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Transportation Authority of Marin

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

**SUBJECT:** Approve Contract No. OP-SV-24-016 with Quality Sprayers, Inc.

Dear Board Members:

**RECOMMENDATION:**

Authorize the General Manager to execute Contract No. OP-SV-24-016 with Quality Sprayers, Inc in an amount not-to-exceed \$413,813. This is a three-year contract with provisions for two (2) optional one-year extensions.

**SUMMARY:**

SMART issued an Invitation for Bid to solicit a Contractor to perform annual on-track and off-track acreage vegetation control for both freight and passenger rail lines on a task order basis under Solicitation No. OP-SV-24-016. Two (2) responsive Proposals were received from the following firms:

1. Danella Rail Services Corp.
2. Quality Sprayers, Inc.

The provided Bid Documents were reviewed, and a determination was made by staff to proceed with the lowest responsive responsible bidder. The type of pre-emergent vegetation management provided under this contract is vital to SMART maintaining a vegetation free operating envelope as required by federal and state regulations. SMART has utilized contractors with specialized equipment to perform this service since 2017.

Staff recommends authorizing the General Manager to execute Contract No. OP-SV-24-016 with Quality Sprayers, Inc. in an amount not-to-exceed \$413,813.

**FISCAL IMPACT:** Funds for this Contract are included in the Fiscal Year 2024-25 Operations Budget and assumed in the subsequent years.

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

Sincerely,  
/s/  
Marc Bader  
Chief Operations Officer

Attachment(s): Quality Sprayers, Inc. Contract No. OP-SV-24-016

## SERVICE AGREEMENT

This agreement (“Agreement”), dated as of January 15, 2025 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District (hereinafter “SMART” or “District”), and Quality Sprayers, Inc. (hereinafter “Service Provider” or “Contractor”).

### RECITALS

WHEREAS, Service Provider represents that it is a duly qualified, licensed, and experienced in the areas of vegetation control and related services; and

WHEREAS, in the judgment of the Board of Directors of SMART or District, it is necessary and desirable to employ the services of Service Provider for vegetation control and related services; and

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

### AGREEMENT

#### **ARTICLE 1. RECITALS.**

Section 1.01 The above Recitals are true and correct.

#### **ARTICLE 2. LIST OF EXHIBITS.**

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

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

#### **ARTICLE 3. REQUEST FOR SERVICES.**

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

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

## **ARTICLE 4. SCOPE OF SERVICES.**

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

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

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

Section 4.04 Assigned Personnel.

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

Jasen Higbee, Connie Ebert, Israel Castenada, Ramon Martinez, Brian Mendoza,  
Kevin Mooney.

## **ARTICLE 5. PAYMENT.**

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

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

Section 5.02 Service Provider shall be paid in accordance with the rates established in **Exhibit B**; provided, however, that total payments to Service Provider shall not exceed \$413,813.00 without the prior written approval of SMART. Service Provider shall submit its invoices in arrears on a monthly basis in a form approved by the Chief Financial Officer. The invoices shall show or include: (i) the task(s) performed; (ii) the SMART division for which services were provided (either Freight or Passenger) (iii) the fees per Exhibit B; (iv) the certified payroll reports; and (v) copies of receipts for reimbursable materials/expenses, if any. All reimbursable expenses must comply with SMART's Travel Guidelines and must receive prior approval. Service Provider's reimbursement for materials/expenses shall not include items already included in Service Provider's overhead as may be billed as a part of its labor rates set forth in **Exhibit B**. SMART does not reimburse Service Provider for travel time.

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

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

## **ARTICLE 6. TERM OF AGREEMENT.**

The term of this Agreement shall remain in effect until January 15, 2028, with two (2) one-year options to extend thereafter at SMART's sole discretion unless terminated earlier in accordance with the provisions of **Article 7** below.

## **ARTICLE 7. TERMINATION**

Section 7.01 Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, SMART shall have the right, at their sole



discretion, to terminate this Agreement by giving 30 days written notice to the other party.

Section 7.02 Termination for Cause. The District's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the District for any payment may arise until funds are made available by the District for this contract and until the Contractor or Consultant receives notice of such availability, as such and notwithstanding any other provision of this Agreement, should Service Provider fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, SMART may immediately terminate this Agreement by giving Service Provider written notice of such termination, stating the reason for termination.

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

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

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

## **ARTICLE 8. INDEMNIFICATION**

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

to the extent required by law, excluding liability due to SMART's conduct. SMART shall have the right to select its legal counsel at Service Provider's expense, subject to Service Provider's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Service Provider or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

## **ARTICLE 9. INSURANCE.**

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

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

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

Said policy shall not contain any exclusions or limitations for wildfire.

Said policy shall also include a Pesticide or Herbicide CG 22 64 Endorsement to provide chemical liability coverage for the ground application of pesticides. Coverage should be provided for bodily injury and 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.

If Service Provider's General Liability Insurance does not include a Pesticide or Herbicide CG 22 64 Endorsement, this requirement may be satisfied by the Contractors Pollution Liability insurance described in Section 9.03.

A follow form Excess Liability policy may be utilized to satisfy the requirements of this section. Said policy shall include the Railroad and Pesticide endorsements as well.

Section 9.03 Contractors Pollution Liability. Contractors Pollution Liability insurance in an amount no less than \$2,000,000 per incident. The Contractor's Pollution Liability policy shall be written on an occurrence or per claim basis with coverage for bodily injury,

property damage and environmental damage, including cleanup costs arising out of third-party claims, for pollution conditions, and including claims of environmental authorities, for the release of pollutants caused by activities related to the Agreement.

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 or asbestos abatement. There shall be no insured vs. insured exclusion in the policy.

If Service Provider does not carry Contractors Pollution Liability insurance, this requirement may be satisfied by the Pesticide or Herbicide CG 22 64 Endorsement to the General Liability Insurance requirements described in Section 9.02.

Section 9.04 Automobile Insurance. Automobile Liability insurance covering bodily injury and property damage in an amount no less than \$2,000,000 combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles. Said policy shall also include a CA 20 70 10 13 endorsement removing the exclusion of coverage for bodily injury or property damage arising out of operations within 50 feet of any railroad bridge, trestle, track, roadbeds, tunnel, underpass or crossing.

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

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

endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not SMART has received a waiver of subrogation endorsement from the insurer.

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

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

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

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

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

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

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

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

Please email all renewal certificates of insurance and corresponding policy documents to [InsuranceRenewals@sonomamarintrain.org](mailto:InsuranceRenewals@sonomamarintrain.org).

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

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

Section 9.11 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice to SMART.

## **ARTICLE 10. PROSECUTION OF WORK.**

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

## **ARTICLE 11. EXTRA OR CHANGED WORK.**

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

## **ARTICLE 12. REPRESENTATIONS OF SERVICE PROVIDER.**

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

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

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

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

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

Economic Interest” with SMART disclosing Service Provider’s or such other person’s financial interests.

Section 12.06 Nondiscrimination. Service Provider shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition (including cancer), pregnancy, physical disability (including HIV and AIDS), mental disability, denial of family care leave, sexual orientation or other prohibited basis, including without limitation, SMART’s Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference. Service Provider shall also comply with the provisions of the Fair Employment and Housing Act (California Government Code, Section 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq).

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

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

gathered, discovered, or generated in any way through this Agreement without the express written permission of SMART.

**ARTICLE 13. DEMAND FOR ASSURANCE.**

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

**ARTICLE 14. ASSIGNMENT AND DELEGATION.**

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

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

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

If to SMART Manager:  
(Passenger Operations)

Sonoma-Marín Area Rail Transit District  
Attn: Marc Bader, Chief Operating Officer  
3748 Regional Parkway  
Santa Rosa, CA 95403  
[mbader@sonomamarintrain.org](mailto:mbader@sonomamarintrain.org)  
707-890-8613

If to SMART Manager  
(Freight Operations)

Sonoma-Marín Area Rail Transit District  
Attn: Jon Kerruish, Freight Manager  
5401 Old Redwood Highway, Suite 200  
Petaluma, CA 94954  
[JKerruish@sonomamarintrain.org](mailto:JKerruish@sonomamarintrain.org)  
415-717-2547



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

If to Service Provider: Quality Sprayers, Inc  
Attn: Jasen Higbee, General Manager  
2325 W. Sequoia Ave.  
Anaheim, CA 92801  
[Jasen@qualitysprayers.com](mailto:Jasen@qualitysprayers.com)  
(714) 381-5661

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

#### **ARTICLE 16. MISCELLANEOUS PROVISIONS.**

Section 16.01 Use of Recycled Paper. SMART requires that all printing jobs produced under this Agreement be printed on recycled content papers. Recycled-content papers are defined as papers containing a minimum of 30 percent postconsumer fiber by weight. All papers used in the performance of a print job for SMART shall be recycled-content paper. The recycle logo or "chasing arrows" cannot be used on printed material unless the paper contains a minimum of 30 percent postconsumer material. If paper meets the 30 percent requirement, ask that the recycling logo be printed on the project.

Section 16.02 No Waiver of Breach. The waiver by SMART of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

Section 16.03 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any

provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Service Provider and SMART acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Service Provider and SMART acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

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

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

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

This project is subject to the Federal Wage determination. Whenever the Federal Wage determination and the California Prevailing Wage determinations conflict, the higher rate shall be paid.

Section 16.05 Licensing Laws. All Service Providers shall be licensed in accordance with the laws of the State of California and any Service Provider not so licensed is subject to the penalties imposed by such laws. Prior to commencing any work under contract, all Service Providers and subcontractors must show that they hold appropriate and current licenses in the State of California. The Service Provider shall provide such subcontractor information, including the class type, license, number, and expiration date to SMART.

Section 16.06 Drug-Free Workplace. Service Provider certifies that it will provide a drug-free workplace in compliance with Government Code §8350-§8357.

Section 16.07 Claims Made Against Service Provider. Service Provider shall provide SMART with copies of all correspondence and records relating to any claims made against the Service Provider while working on SMART's property by SMART employees or third-party on a monthly basis.

Section 16.08 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

Section 16.09 Relationships of the Parties: No Intended Third-Party Beneficiaries. The Parties intend by this Agreement to establish a cooperative funding relationship, and do not intend to create a partnership, joint, venture, joint enterprise, or any other business relationship. There is no third person or entity who is an intended third-party beneficiary under this Agreement. No incidental beneficiary, whatever relationship such person may have with the Parties, shall have any right to bring an action or suit, or to assert any claim against the Parties under this Agreement. Nothing contained in this Agreement shall be construed to create and the Parties do not intend to create any rights in third parties.

Section 16.10 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Venue for any action to enforce the terms of this Agreement or for the breach thereof shall be in the Superior Court of the State of California in the County of Marin.

Section 16.11 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

Section 16.12 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

Section 16.13 Acceptance of Electronic Signatures and Counterparts. The parties agree that this Contract, Agreements ancillary to this Contract, and related documents to be entered into this Contract will be considered executed when all parties have signed this Agreement. Signatures delivered by scanned image as an attachment to electronic mail or delivered electronically through the use of programs such as DocuSign must be treated in all respects as having the same effect as an original signature. Each party further agrees that this Contract may be executed in two or more counterparts, all of which constitute one and the same instrument.

Section 16.14 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

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

**QUALITY SPRAYERS, INC.**

By: \_\_\_\_\_  
Steven Cox, Vice President

Date: \_\_\_\_\_

**SONOMA-MARIN AREA RAIL TRANSIT (SMART)**

By: \_\_\_\_\_  
Eddy Cumins, General Manager

Date: \_\_\_\_\_

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

By: \_\_\_\_\_  
Ken Hendricks, Procurement Manager

Date: \_\_\_\_\_

**APPROVED AS TO FORM FOR SMART:**

By: \_\_\_\_\_  
District Counsel

Date: \_\_\_\_\_

**EXHIBIT A**  
**SCOPE OF WORK & TIMELINE**

**I. Overview**

The Sonoma-Marín Area Rail Transit District (SMART) is contracting with Quality Sprayers, Inc. (Service Provider) to perform annual on-track and off-track vegetation control for both freight and passenger rail lines and acreage on a task order basis. All work must be completed before February 15, 2025, in the first year’s scope of services. For all years thereafter, the SMART Manager and Service Provider shall mutually agree upon the schedule prior to work commencing.

Below are the estimated quantities of track miles and acreage for both passenger and freight operations requiring service.

Description	Estimated Annual Quantity	UOM
On-Track Spray	76	Track Mile
Off-Track Spray	16	Acre
Brush Control Spray	8	Acre

As-Needed Additional Work

SMART may require additional work above and beyond the quantity of track miles and acres included in the estimated annual quantity. Additional work will be on an as-needed basis and may occur at any time during the term of the contract.

**Objectives**

Service Provider shall approach SMART vegetation control with equipment and technologies that emphasize:

- 1) Safety
- 2) Quality
- 3) Effective and successful application
- 4) Low volume solution
- 5) Drift control
- 6) Minimize track time
- 7) Accurate spray reports

Service Provider must have all field employees trained in on track safety procedures prior to working within 25 feet of any track. All Service Provider employees will be

provided access to a third party, online training program in SMART's Roadway Worker Protection Training for Railroad Service Providers. Service Provider shall be responsible for payment of the fee directly to the third-party provider of the online training. Service Provider must provide SMART a detailed list of each employee that has received training and the date in which the training was done. Service Provider must also train any additional employees hired before they can work on SMART property. Service Provider's project manager in the field is responsible for ensuring that all Service Provider and subcontractor personnel are qualified and comply with on track safety procedures.

Service Provider must arrive at or ahead of scheduled time and ready for work including, but not limited to, full fuel tanks, holding tanks filled and mixed, and daily high-rail inspection completed.

All herbicide applications will be made per manufacturer's specifications on product labels. Any drift and/or chemical trespass claims will be the responsibility of the Service Provider. For an application program, all chemicals used and areas to be treated on SMART right-of-way must be managed by Service Provider who will determine the mixture that will be best suited for application. The program objective is to prevent growth through a pre-emergent program. The program will be designed to provide a level of control acceptable to SMART. SMART reserves the right to monitor and sample chemical applications at any time to ensure proper use. Failure to use appropriate mixture will be deemed as a breach of contract and may result in termination.

In order to have effective 90% bare ground treatment vegetation control, the spraying must be completed in a timely manner. The measurement of this specification will be based on the number of track miles comparing results of live vegetation growth versus no vegetation growth or killed growth.

SMART's policy is to conduct its Vegetation Control Program in the most environmentally sound and safe manner. To promote applicable stewardship on SMART property, Service Providers will utilize SMART's IPMP (Integrated Pest Management Plan) strategies including the use of EPA-approved chemical formulations, when necessary, on the Railroad's right-of-way outside of designated total control spray patterns.

All appropriate spray drift regulations shall be observed for each applicable regulatory body. SMART will encourage all Service Providers to provide innovative mechanical, chemical, and/or other means to reduce drift and maintain the accuracy of application to confine herbicide treatments.

No exclusions will be made from treatment areas bordered by favorable vegetation other than to comply with herbicide product labels to avoid sensitive areas and to comply with regulatory requirements for buffers.

Vegetation Control shall commence during a pre-emergence period of plant growth defined by geographic and environmental conditions prevailing during the current year of treatment. SMART has notated on the scope of work initial spray months; however, this information is to be used a suggestion and the ultimate scheduling to meet our specifications and expectation reside with the Service Provider. The Service Provider is the expert and is responsible to meet the specifications as outlined in the scope of work. Service Provider shall furnish a report three (3) weeks in advance of application. This report shall detail the proposed application schedule (including start and completion dates) and chemical mix (chemical formulations should stipulate the specific rate to be applied for an area of land – formulations provided will be considered as proprietary). All correspondence and reports on scheduling and results should go directly to the SMART Manager.

## **II. Contract Management**

All work shall be initiated, scheduled, and reviewed by the Maintenance of Way Manager or Freight Manager or designee (hereinafter “SMART Manager”). Work may be initiated in writing or by teleconference.

## **III. Scope of Work**

All work will be issued by written task order, which shall identify the number of track miles and acres requiring service.

Below are general service requirements:

### **A) Main Line and Side Tracks Service Requirements**

- i) Single main track total vegetation treatment should be 40-foot wide measured horizontally 20 feet on each side, from the centerline of track.
- ii) The area between main line and sidings parallel to main track shall have total vegetation control treatment unless otherwise directed by the SMART Manager (Approximately 6 miles).
- iii) All vegetation control must achieve 90% bare ground coverage within a forty (40) foot area for season-long control. The season will be defined hereafter as the eight months following application of the pre-emergent herbicide. If the above conditions are not met due to Service Provider’s failure, the Service Provider shall be liable for all expenses, including but not limited to Service Provider and SMART expenses incurred in re-treatment or mechanical removal at the discretion of the SMART Manager. SMART expenses include, but are not limited to railroad labor, equipment use, and any fines issued to the SMART during the year of application.

- iv) SMART shall have the right to restrict the use of specific herbicides in specific locations.
- v) All tracks shall be treated with an adequate residual herbicide, mixed with a systemic herbicide if called for. Herbicide programs must be designed to provide season long 90% Bare Ground control such that repeat applications are avoided. If a re-treatment of a track, over the agreed upon secondary systemic applications, is required because of chemical application failure, any and all costs associated with the additional application will be the sole responsibility of the Service Provider. Herbicide programs should be designed to provide complete root kill of all perennial and annual species of vegetation.
- vi) All Signs, Signals, and Mileposts shall be sprayed twenty-five (25) feet prior to one directional and twenty (20) feet wide with a fifty (50) approach prior to and after all two directional signs, signals, and mileposts.
- vii) Ninety percent Bare Ground vegetation control is to be maintained within a 15-foot perimeter at railroad appurtenances (e.g. examples of but not limited to are switch stands, hot box detectors, Central Instrument Locations (CIL's, signal instrument houses), communication houses, and dragging equipment detectors. The perimeter will be determined on the shape of the object to be treated. Care must be taken to avoid spraying electronic detection equipment that is exposed and not under cover. (Approximately 45 switches, 57 signals, and 106 CIL's year one, and approximately 49 switches, 63 signals, and 110 CIL's thereafter).
- viii) Public and Private Road Crossings: spray pattern for crossings shall be fifteen (15) feet beyond the roadbed pattern on both sides for two hundred and fifty (250) feet per quadrant. (Approximately 67 passenger and 30 freight crossings year one, approximately 71 passenger and 30 freight crossings thereafter).

#### B) Yard Tracks

- i) Multiple yard tracks are generally constructed on 13- to 20-foot centers. Yard tracks are to be sprayed out-of-face. Total vegetation control treatment shall extend from centerline-to-centerline of such tracks and at least 12 feet beyond the centerline of outside tracks. Total vegetation control treatment shall be applied between yard tracks with track centers exceeding 25 feet only when directed by SMART. Each track in a yard shall be treated individually to avoid shadow effect application.



- ii) Single yard tracks are to have bare ground treatment 24 feet wide based on the locations and pattern requirements above.
- iii) Service Provider is to furnish detailed track number, track lengths, and track centers to support billing. Information can be provided by SMART Manager. Daily activity to be signed off by SMART representative showing employee ID and printed first and last name.

#### C) Bridges, Viaducts and Culverts

- i) The track approaches to these structures shall have a spray pattern 50-foot wide measured horizontally 25 feet on each side, from the centerline of track up to the head wall of the structure. (Approximately 30 bridges)
- ii) These structures are not to be sprayed near waterways per the National Pollutant Discharge Elimination System (NPDES) Environmental regulations unless directed so by the SMART in writing.
- iii) Herbicides must NOT be applied in, around, or to protected watershed territories, standing water, and/or below high-water marks under bridge structures with seasonal waterways.

#### D) Brush Control and Specialized Treatments

- i) Brush spray pattern will begin at 20' from the center of track and extend out to 40' from the center of track, where safe and practical to do so. Brush will be sprayed to a height no less than 15' above the rail in this treatment area. (Approximately 3 acres Passenger and 5 acres freight of brush spraying)
- ii) Woody vegetation and other problem weeds, outside the spray pattern, shall be controlled at the discretion of SMART. Chemical trespass will be minimized through Service Providers use of appropriate-labeled chemicals and equipment maintained with booms, nozzles, spray volumes, and pressures designed to minimize formation of small droplets of herbicide-containing solutions. All chemical treatments and areas to be treated will be determined by SMART. Service Provider must provide documentation of all work performed, which must be signed by a SMART Representative along with their name and SMART employee ID.
- iii) Vine control and spray of vegetation encroaching on the spray pattern shall be performed at the discretion of the SMART's Maintenance of Way Manager or his designated representative. The Service Provider shall heavily target blackberry vines and bushes during Brush Control spraying services.

E) Off-Track Weed Control Program, Facilities, Yards, etc.

- i) Ninety percent Bare Ground vegetation control will be maintained around station facilities, including, but not limited to, material storage piles, fuel facilities, shop buildings and grounds, graveled areas between track in terminals, and in other areas identified by the SMART. (Approximately 11 acres Passenger and 5 acres freight of off-track spraying).
- ii) Facilities shall be treated to provide access, sight clearance, and unhindered function of respective locations. Weed control will be within a 15-foot perimeter around individual facilities.
- iii) Service Provider must cooperate with the SMART Manager or approved SMART Representative to determine exact treatment areas and herbicide formulations.
- iv) The Service Provider will be required to provide all documented and signed work to SMART. The on-site SMART Representative's name requesting the additional work must sign the Service Provider's report, which must be furnished to the Maintenance of Way Manager.

**IV. Performance Guarantees**

- A. The Service Provider shall provide an application schedule prior to the beginning of each annual season. If schedule dates are missed and it is determined that late timing has negatively impacted results, then the Service Provider will be considered to be in breach of the Agreement.

**V. Retreatment**

- A. In the event the Service Provider shall receive a "call back", that is, an oral or written demand by the SMART's Manager to re-treat an area, the terms of a "call back" are that the Service Provider must submit a written treatment schedule to the SMART Manager within 7 calendar days of written demand by the SMART Manager and arrive onsite at the designated location to begin treatment within 14 calendar days of acceptance of the written treatment schedule. Retreatment must be documented in daily work activity forms. Failure to comply with such a schedule will be considered default of the Agreement.
- B. In the event re-treatment is required, the Service Provider shall provide sufficient personnel and equipment resources to ensure re-treatment and it shall not interfere with the regular scheduled program treatments.
- C. The Service Provider will be required to re-treat all areas considered unsatisfactory at its cost – including all Service Provider labor, equipment costs, and all chemical costs. In addition, the Service Provider shall be liable for all

SMART expenses, including but not limited to, SMART labor, equipment use, and any fines issued to SMART during the year of application.

- D. The primary goal of a SMART vegetation management program is to treat rights-of-way and property in an appropriate manner to accomplish weed control with one application of pre-emergence herbicide(s). A second application using residual herbicides will be required for control of difficult to control species and untreated areas.

## **V. Use, Inspection and Operation of Equipment**

- A. Service Provider agrees to provide and maintain equipment in good operating condition. SMART reserves the right to inspect Service Provider's equipment at any time. In the event that SMART deems Service Provider's equipment unsuitable, Service Provider shall, at its sole cost and expense, replace said equipment.
- B. Upon request, Service Provider shall furnish equipment calibration test results to the SMART.
- C. SMART will provide, at no cost to Service Provider, a qualified track escort to assist the movement of Service Provider's on-track mounted spray equipment over SMART's tracks. Service Provider shall not work on the SMART's legal holidays unless otherwise approved by SMART.
- D. Service Provider's equipment must be in compliance with all federal, state, and local mandates relative to inspections and safety appliances.

## **VI. Production Reporting**

- A. All reporting requirements are the responsibility of Service Providers. This involves communicating among SMART, Service Providers, and responsible local officials.
- B. The Service Provider shall comply with all Pesticide Use Reporting requirements per the California Department of Pesticide Regulation.
- C. Service Provider shall furnish to SMART one (1) copy of daily log or spray reports and reports of trackage not treated certified correct by the Service Provider's authorized representative and the SMART representative. The spray report must indicate the SMART Representative's name and SMART employee ID at the time work was performed. All daily progress spray reports must be signed off by a SMART Representative on the day work was performed.
- D. Service Provider must provide a management system that is available for both Service Provider and SMART personnel to monitor Key Performance Indicators

(KPIs). This management system can range from a simple Excel spreadsheet to a more sophisticated project management system.

**VII. Water for Diluting Chemicals/ Pollution Control**

- A. Service Provider at its own cost will furnish water for their use in applying herbicides. The Service Provider is required to avoid contamination of water by equipping each piece of application equipment and service rig that handles herbicides and draws water from an outside source with an air-gap separation or reduced pressure principle back flow prevention device that is acceptable to the water purveyor and the local Health Department. It is the sole responsibility of the Service Provider to arrange for the supply of water with local utilities.

**VIII. Movement and Cleaning of Cars/Containment, Leakage and Spillage of Chemicals**

- A. Service Provider will provide all transportation for herbicides while on SMART property.
- B. Service Provider shall store all herbicides offsite and away from SMART property.
- C. Service Provider shall properly dispose of empty containers offsite and away from SMART property. All debris and material disposal shall comply with all Governmental regulations pertaining to properly handling waste materials.
- D. The waste materials may be applied on an approved-labeled site not to exceed the labeled rates. Wash water and rinses may either be reused as make up water for dilution of herbicides in preparation for application and can be applied on approved sites not exceeding the labeled rates, or may be disposed of in accordance with the approved Federal and State regulation

**IX. Environmental Compliance**

- A. Service Provider, at its expense, shall be responsible for all-environmental permits, registrations, reports, taxes and plans required or necessary for performance of its obligations under this Agreement. Service Provider confirms that it is the Service Provider's responsibility to be familiar with all applicable federal, state and local environmental laws, rules and regulations pertaining to Environmental Substances, and that is not the responsibility of the SMART to provide consultation to Service Provider regarding such environmental laws, rules and regulations or the proper handling and disposal of Environmental Substances. Service Provider shall maintain efficient and good management practices concerning the proper handling and disposal of Environmental Substances. Service Provider, at its expense, shall assume all responsibility for the investigation and cleanup of any release or discharge of any Environmental

Substance or any federal, state or local regulated wastes that arises from Service Provider's performance of any work, presence or other activity. In addition to other liability terms contained in this Agreement, Service Provider agrees to indemnify, defend, and hold harmless SMART, its officers, agents, and employees, from and against all environmental, claims, damages, costs and expenses. Including without limitation, all costs relating to lab samples, reports to be generated by the SMART and/or Service Provider, environmental analysis and cleanup expenses, fines and claims, or penalties arising from any work, presence or activity of Service Provider.

- B. Employees of the Service Provider must be provided spill clean-up supplies and equipment by its employer. Service Provider shall comply with federal, state or local regulations for Minor spills and shall at a minimum cleanup the site using a dry absorbent material for liquids. All dry materials are to be disposed of properly. A report of the spill should be attached to the daily report stating herbicide type, amount of loss, location, and measures used in clean up. Major spills, defined as spills which exceed 25 gallons of liquid or 50 lbs. of solid material, or which involve releases into surface water or onto adjacent (non-Railroad) property area must be reported the Maintenance of Way Manager immediately. The Service Provider must make every effort to contain spill and minimize effect on the environment. The Service Provider shall be responsible for costs associated with clean-up of spills resulting from its operations.
- C. Service Provider shall comply with all Federal, state, and local environmental laws and regulations in its work and shall perform all such work in an environmentally protective manner. Service Provider's responsibilities shall include, but not be limited to the following:
  - i. Prevent releases and spills of any materials that could harm human health or the environment, including but not limited to, leakage of any substance from the Service Provider's equipment, fuel and/or lubricant containers, or chemical containers with hazardous wastes as defined in the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act, respectively, (hereinafter called "Environmental Substances");
  - ii. In the event of a release or spill of an Environmental Substance, clean up such release and, if the soil is impacted, Service Provider shall also excavate the contaminated soil and properly dispose of such contaminated soil off of SMART's property;
  - iii. Prevent any released Environmental Substances from spreading and/or entering waterways by keeping a supply of absorbent materials on site i.e. oil absorbent pads and booms which shall be used for such purposes;

- iv. Observe and comply with any applicable state and local laws or regulations governing the handling, storage, transportation or disposal of waste materials, including but not limited to, used oils and filters and shall ensure that such wastes are properly labeled, manifested, transported, and disposed of or recycled;
- v. Furnish a copy of all hazard waste manifests, as soon as the manifest is created, to the SMART employee designated as the manager or supervisor of the applicable Facility and fax a copy of the hazardous waste manifest to Maintenance of Way Manager or such other address or tele-fax number is contained in a notice given pursuant to section entitled "Notices" in this agreement;
- vi. Obtain and maintain required environmental permits, registrations, reports, and plans, including but not limited to, permits and plans associated with the operation and maintenance of the Railroad owned equipment, and prepare any environmental plans required as a result of Service Provider's operations and make them available to the SMART upon request;
- vii. Collect all anti-freeze draining for proper disposal or recycling and avoid draining any anti-freeze onto the SMART's property;
- viii. Remove and properly dispose of all solid waste and rubbish on a regular basis in accordance with all laws and regulations.
- ix. All disposal facilities used by Service Provider for disposal of any Railroad waste material, or any waste material generated by Service Provider in connection with compliance with Service Provider's obligations under this Agreement shall be approved by a representative of SMART prior to delivery of any waste material to such facility. Further, no waste material disposed of pursuant to this Agreement shall be commingled prior to disposal with waste material of any other party.

## **X. Miscellaneous Provisions**

- A. Service Provider shall temporarily discontinue application of herbicides whenever, in the opinion of the Service Provider, unfavorable meteorological conditions exist, which would affect non-target vegetation. However, Service Provider is still responsible for the level of control specified in the contract. Service Provider will make all efforts to inform the SMART Manager in a timely fashion when applications previously scheduled are temporarily discontinued.
- B. Service Provider shall provide SMART with copies of all correspondence and records relating to any claims made against the Service Provider while working on SMART's property by SMART employees or third parties on a monthly basis.

- C. SMART will not be responsible for Service Provider's equipment or chemicals, which are damaged by any means, vandalized, or stolen.
- D. Time conflicts of applicators imposing on SMART maintenance-of-way and number of trips over each area are to be minimized. Where possible, weed control will be accomplished with a single application of pre-emergent herbicide in lowest possible solution volume per acre to accomplish season-long weed control.
- E. The spray pattern may need to be adjusted for specific locations i.e., many neighboring communities have plantings for beautification per lease agreements. The Service Provider shall be responsible for any damages to adjacent properties, public or private, resulting from Service Provider's negligence. The Service Provider shall, at its expense, restore, repair, replace and maintain all property, regardless of ownership, which is damaged or altered by the Service Providers or its subcontractor's negligence.
- F. Service Provider is responsible for the proper disposal of all related materials and empty containers in compliance with all laws and regulations.
- G. Service Provider will furnish chemical product label information at the request of the SMART.
- H. Operators shall carry on their person the appropriate certification card any time they are engaged in spraying operations on SMART property. Prior to award, documentation of all required licensing must be provided.

## **XI. Timeline for Each Requirement / Task**

Timelines for each task will be identified within the Task Order and mutually agreed upon by both SMART and Service Provider.

## **XII. Acceptance Criteria**

Upon completion of the work described, the SMART Manager or their designee will perform final inspections and review all punch list items with Service Provider to ensure all work has been completed to SMART's specifications. Upon the SMART Manager determination that the work meets all requirements, SMART will provide a written notice of acceptance the work.

**EXHIBIT B  
SCHEDULE OF RATES**

<b>ITEM</b>	<b>ITEM DESCRIPTION</b>	<b>UNIT</b>	<b>UNIT PRICE</b>
1	On-Track Spray	Per Track Mile	\$1,737.50
2	Off Track Spray	Per Acre	\$305.00
3	Brush Control Spray	Per Acre	\$305.00

The prices above include all costs for labor, materials, tools, mobilization, equipment, services, subcontractors, suppliers, taxes, insurance, shipment, delivery, overhead, profit, and all other direct and indirect costs necessary to perform the work in accordance with the Agreement.

The fees shall be fixed for the first three years. Upon completion of the first three years of service, and prior to the commencement of each optional year of this Agreement, Service Provider may, upon 60 days written notice to SMART, request an increase in the contracted rates equal to the Consumer Price Index, San Francisco Area, as reported by the Bureau of Labor Statistics, U.S. Department of Labor, using the month of August for the most recent year.



**EXHIBIT C  
FTA & DOT REQUIREMENTS**

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

**1. General.**

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

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

**2. Access To Records and Reports.**

*Applicability: All Contracts*

Contractor shall comply with the following requirements:

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

Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

(c) Access to Records. The Contractor agrees to provide access to SMART, FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required. Contractor shall also permit SMART, the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all project work, materials, payrolls, and other data, and to audit the books, records, and accounts of Contractor and its subcontractors pertaining to the Agreement. In accordance with 49 U.S.C. § 5325(g), Contractor shall require each subcontractor to permit SMART, the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that subcontractor agreement and to audit the books, records, and accounts involving that subcontractor agreement as it affects the Agreement.

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

(e) State Audit, Inspection, Access to Records and Retention of Records Requirements. Contractor and its subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred costs by line item for the project. Contractor and its subcontractors' accounting systems shall conform to generally accepted accounting principles (GAAP) and all records shall provide a breakdown of total costs charged to the project, including properly executed payrolls, time records, invoices and vouchers as well as all accounting generated reports. Contractor and its subcontractors shall permit representatives of the State and State Auditor to inspect, examine, make excerpts or transcribe Contractor and its subcontractors' work, documents, papers, materials, payrolls, books, records, accounts, any and all data relevant to this Agreement at any reasonable time and to audit and verify statements, invoices or bills submitted by Contractor and its subcontractors pursuant to this Agreement, and shall provide copies thereof upon request and shall provide such assistance as may be reasonably required in the course of such audit or inspection.

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

Any costs for which Contractors and its subcontractors have received payment that are

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

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

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

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

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

### 3. **ADA Access**

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

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

### 4. **Buy America.**

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

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR  
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§200.322 Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7.

Construction materials used are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. The Service Provider acknowledges that this agreement is neither a waiver of §70914(a) nor a finding under §70914(b).

Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. §5323(u) and 49 C.F.R. § 661.11, Domestic preferences for procurements.

The bidder or offeror must submit to SMART the appropriate Buy America certification. For more information, please see the FTA’s Buy America webpage at: <https://www.transit.dot.gov/buyamerica>.

## 5. Lobbying

*Applicability: All Contracts > \$100,000*

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, “New Restrictions on Lobbying”. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of a Federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier certifies to the tier above that it will not and has not taken any action involving the Project or the Underlying Agreement for the Project, including any award, extension, or modification. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to SMART.

## 6. Cargo Preference Requirements.

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

The Contractor agrees to:

(a) to use privately owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners,

and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Agreement to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels;

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

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

## **7. Charter Service.**

*Applicability: All Operations & Management Contracts*

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

## **8. Civil Rights.**

*Applicability: All Contracts*

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

1. **Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:
  - a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
  - b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, “Equal Employment Opportunity,” September 24, 1965, as amended, prohibit

discrimination in employment on the basis of race, color, religion, sex, or national origin.

2. **Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
3. **Nondiscrimination on the Basis of Age.** The “Age Discrimination Act of 1975,” as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.
4. **Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

### **Civil Rights and Equal Opportunity**

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

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any Implementing requirements FTA may issue.
4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
5. **Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

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

## **9. Clean Air Act**

*Applicability: All Contracts > \$150,000*

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

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

## **10. Clean Water Act**

*Applicability: All Contracts > \$150,000*

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Water Act, as amended, 33 U.S.C. §§ 1251 - 1377 et seq.
- (2) The contractor agrees to report each violation to the SMART and understands and agrees that SMART will, in turn, report each violation as required to assure notification to the FTA, and the appropriate Environmental Protection Agency Regional Office in compliance with the notice of violating facility provisions in section 508 of the Clean Water Act, as amended, 33 U.S.C. 1368.
- (3) The Contractor agrees to protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f-300j-6.
- (4) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.”

## **11. Conformance with National ITS Architecture**

*Applicability: All ITS Contracts*

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



architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture.

## 12. Contract Work Hours and Safety Standards Act.

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

- a. Where applicable (see 40 U.S.C. § 3701 et seq), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.
- b. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- c. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

### Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was

required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

- (3) Withholding for unpaid wages and liquidated damages. SMART shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

### **13. Davis Bacon Act and Copeland Anti-Kickback Act**

*Applicability: All Construction Contracts > \$2,000*

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

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

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

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

agency.

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

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

#### **14. Debarment and Suspension**

*Applicability: All Contracts > \$25,000*

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

The certification in this clause is a material representation of fact relied upon by the SMART. If it is later determined that the contractor knowingly rendered an erroneous certification, in addition to remedies available to SMART, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 2 CFR 180 throughout the period of this contract.

#### **15. Disadvantaged Business Enterprise (DBE)**

*Applicability: All Contracts*

Quality Sprayers, Inc.  
Agreement  
OP-SV-24-016

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

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

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

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

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

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

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

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

#### **16. DHS Seal, Logo, and Flags.**

*Applicability: All Contracts*

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

#### **17. Energy Conservation.**

*Applicability: All Contracts*

The Consultant agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act. The consultant agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA funds required under FTA regulations, “Requirements for Energy Assessments,” 49 CFR part 622, subpart C.

#### **18. Federal Changes.**

*Applicability: All Contracts*

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

#### **19. Fly America.**

*Applicability: All Contracts*

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

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

*Applicability: All Contracts*

Incorporation of Federal Transit Administration (FTA) Terms - The provisions within include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the current FTA Circular 4220 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

## **21. No Obligation by the Federal Government.**

*Applicability: All Contracts*

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

## **22. Notice of Legal Matters.**

*Applicability: All Contracts > \$25,000*

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

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

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

*Applicability: All Research Project Contracts*

#### Intellectual Property Rights

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract.

The Contractor shall grant the Sonoma-Marin Area Rail Transit District intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 C.F.R. part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by FTA or U.S. DOT.

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

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

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

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Federal Government Purposes,” any subject data or copyright described below. For “Federal Government Purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.
  - a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
  - b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA’s license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject



data as defined herein and shall be delivered as the Federal Government may direct.

3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.
6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

#### **24. Pre-Award and Post Delivery Audits Requirements.**

*Applicability: All Rolling Stock/Turnkey Acquisition Contracts*

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

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

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

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

## 25. Recycled Products.

*Applicability: All Contracts > \$10,000*

The Contractor agrees to comply with all the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. The Contractor agrees to comply with the U.S. Environmental Protection Agency (US EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials", 40 CFR Part 247.

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

*Applicability: All Contracts*

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

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

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

## **27. Prompt Payment.**

*Applicability: All Contracts*

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

## **28. Safe Operation of Motor Vehicles.**

*Applicability: All Contracts*

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

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

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

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

## 29. Seismic Safety.

*Applicability: All A&E and Construction Contracts*

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project. The Contractor will facilitate and follow Executive Order No. 12699, “Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction,” 42 U.S.C. 7704 note, except as the Federal Government determines otherwise in writing.

## 30. Transit Employee Protective Agreements

*Applicability: All Transit Operations Contracts*

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

- i. General Transit Employee Protective Requirements – To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 CFR Part 215, and any amendments thereto. The requirements of this subsection however do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities

authorized by 49 U.S.C. 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. 5311. Alternate provisions for those projects are set forth in subsections (B) and (C) of this clause.

- ii. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. 5310(a)(2) for Elderly Individuals and Individuals with Disabilities – If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. 5333(b) are necessary or appropriate for the state and SMART for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. 5333(b), U.S. DOL guidelines at 29 CFR Part 215, and any amendments thereto.
- iii. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. 5311 in Non-Urbanized Areas – If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.
- iv. The Contractor also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance by FTA.

### **31. Special DOL EEO Clause**

*Applicability: All Construction Contracts > \$10,000*

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

### **32. Drug and Alcohol Testing**

*Applicability: All Transit Operations Service Contracts*

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its

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

### **33. Termination.**

*Applicability: All Contracts > \$10,000*

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

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

(b) Termination for Default [Breach or Cause]. If the Contractor does not deliver supplies in accordance with the Agreement delivery schedule, or, if the Agreement is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, SMART may terminate this Agreement for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the Contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by SMART that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, then SMART, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

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

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

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

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

(f) Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

(g) Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

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

If, after termination for failure to fulfill contract obligations, it is determined that the

Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

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

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

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

(i) Termination for Convenience or Default (Architect and Engineering Contracts). SMART may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Agency 's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and



other information and materials.

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

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

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

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

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

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

### **34. Veterans Hiring Preference.**

*Applicability: All Contracts*

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

1. Will give a hiring preference to veterans, as defined in 5 U.S.C. §2108, who have the skills and abilities required to perform construction work required under Agreement in connection with a Capital Project supported with federal

assistance appropriated or made available for 49 U.S.C. chapter 53; and

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

### **35. Violation and Breach of Contract.**

*Applicability: All Contracts*

#### Rights and Remedies of SMART

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

#### Rights and Remedies of Contractor

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

#### Remedies

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

#### Disputes

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

#### Performance during Dispute

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

### Claims for Damages

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

### **36. Geographic Restrictions.**

*Applicability: All Contracts*

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

### **37. Metric System.**

*Applicability: All Contracts*

To the extent required by U.S. DOT or FTA, Contractor shall use the metric system of measurement in its project activities pursuant to the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. 205a et seq.; Executive Order No 12770 "Metric Usage in Federal Government Programs, 15 U.S.C. § 205a note; and other regulations, guidelines, and policies issued by U.S. DOT or FTA. To the extent practicable and feasible, SMART agrees to accept products and services with dimensions expressed in the metric system of measurement.

### **38. Environmental Protection.**

*Applicability: All Contracts*

Contractor shall comply with the following requirements:

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

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

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

### **39. Privacy Act.**

*Applicability: All Contracts*

Contractor agrees to comply with and assures the compliance of its employees with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C § 552. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. Contractor understands that the requirements of the Privacy Act, including civil and criminal penalties for violation of the Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

### **40. Transit Vehicle Manufacturer (TVM) Certifications**

*Applicability: All Rolling Stock Contracts*

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

### **41. Federal Tax Liability and Recent Felony Convictions**

*Applicability: All Contracts*

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

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

*Applicability: All Research and Development Contracts*

Contractor agrees to comply with the requirements of 37 C.F.R. §401.2(a), “Rights to Quality Sprayers, Inc. Agreement  
OP-SV-24-016

Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Agreements” and any implementing regulations issued by SMART.

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

*Applicability: All Contracts*

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

**44. Domestic Preferences for Procurements**

*Applicability: All Contracts*

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

For the purposes of this section:

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

**EXHIBIT D**  
**FEDERAL WAGE DETERMINATION**

*On file with the Clerk of the Board*