



**BOARD OF DIRECTORS
REGULAR MEETING AGENDA
July 17, 2024 - 1:30 PM**

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

5401 Old Redwood Highway, 1st 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/88227285065?pwd=SWQ4eDBMcTIHZUgvVndiYlhHTzJPUT09](https://sonomamarintrain-)

Webinar ID: 882 2728 5065; Passcode: 019592

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 by 5:00 PM on Tuesday, July 16, 2024.

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 July 17, 2024

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

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

1. Call to Order
2. Approval of the June 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 – June 2024
- 6b. Approval of Monthly Financial Reports – May 2024
- 6c. Authorize the General Manager to Execute Contract Amendment No. 4 with Nossaman for an amount of \$200,000 to provide specialized legal support on an as-needed basis
- 6d. Adopt a Resolution to accept the Revised Policy HRM-007, Drug and Alcohol-Free Workplace Policy, effective, effective July 17, 2024

Regular Calendar

7. Adopt a Resolution Authorizing the General Manager to Award Contract No. PL-BB-24-001 with Square Signs LLC dba Front Signs to Furnish and Install System-Wide Pathway Wayfinding Signage for an amount of \$599,446.99; and for project contingency for a total project cost not-to-exceed \$736,638.09 - *Presented by Planning Manager, Emily Betts*
8. Authorize the General Manager to Award Contract No. OP-SV-24-008 with Clean Solution Services, Inc. for an amount of \$440,116 to perform janitorial services at SMART's stations, park and ride lots, and facilities - *Presented by Maintenance of Way Manager, Michael Spurlock*
9. Closed Session – Conference with legal counsel regarding existing litigation pursuant to California Government Code Section 54956.9(a); Number of cases: (1) *SMART v. Cross Link, Inc., dba Westar Marine Services, et al.*; Marin County Superior Court Case No. CV0001710

10. Report Out Closed Session
11. Next Board of Directors Meeting, August 21, 2024 – 1:30 PM – 5401 Old Redwood Highway, 1st Floor, Petaluma, CA 94954
12. Adjournment

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 or submitted by phone at (707) 794-3072. Requests made by mail SMART's, 5401 Old Redwood Highway, Suite 200, Petaluma, CA 94954 must be received at least two days before the meeting. Requests will be granted whenever possible and resolved in favor of accessibility.



**BOARD OF DIRECTORS
REGULAR MEETING MINUTES**

June 18, 2024 – 1:30 PM
5401 Old Redwood Highway, 1st Floor
Petaluma, CA 94954

1. Call to Order

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

2. Approval of the May 15, 2024 Board Meeting

MOTION: Director Colin moved approval of the May 15, 2024 Board Meeting Minutes as presented. Director Fudge second. The motion carried 10-0 (Director Farac absent; Director Coursey arrived later).

3. Citizens Oversight Committee Report – *Presented by COC Chair Dani Sheehan-Meyer*

COC Chair Sheehan-Meyer stated that the COC met twice (2) this year to provide input on the Fiscal Year 2025 draft Budget and with two more planned to review the updated 2019 Strategic Plan. The Committee commended the General Manager's report and are anxious to hear the citizen feedback on the listening sessions which concluded May 31st. The extended service to Steelhead Beach was impressive and we hope, will be popular. The Rose-E Trolley is a terrific initiative and the opening of the Larkspur Connect is very progressive and addresses much needed first/last mile issues, as well. We had a ridership and pathway count discussion as to how this was reflected in the draft budget. Staff did a great job of explaining some of these intricacies including the FTA's triennial review. We look forward to the completion of North McDowell Station and Windsor Extension project. The fiscal year 2024/2025 Draft Budget for Passenger and Freight was presented, and the COC recommends the Board approval.

Comments

Director Paulson asked if the various recommendations that the COC members wanted from the Board and staff to do differently was discussed. COC Chair Sheehan-Meyer responded that most items have been addressed.

4. Board Members Announcements

Chair Lucan said that on behalf of the SMART Board of Director and staff he congratulated Director Rogers, a new father of a baby boy. A themed gift bag with SMART swag was given to Director Rogers. Director Rogers thanked everyone for the generous gift.

Director Rogers stated that he would be leaving the meeting at 2:30pm to attend the City of Santa Rosa Council meeting at 3:00pm.

5. General Manager's Report

General Manager Cumins provided an overview on the following:

- Contracts/Procurements over \$100k
- Ridership Update
- Construction Update
- Groundbreaking Event
- Larkspur Shuttle – SMART Connect
- August Service Changes
- Marin County Fair
- Questions

Director Coursey arrived 1:40pm

Contracts/Procurements over \$100k

Triangle Properties, Inc. Contract Agreement No. EV-BB-24-001 was executed to implement the East Windsor Creek at Oakfield Trail Riparian Enhancement Project in the Town of Windsor and includes five years of maintenance and monitoring services. This contract agreement has a not-to-exceed amount of \$138,560.

Dudek Contract Agreement No. CV-PS-24-001 was executed to provide Biological & Cultural Resource Monitoring Services during the Construction of the Southpoint Blvd (Petaluma) to Main Street (Penngrove) Pathway Segment and the Golf Course Drive (Rohnert Park) to Bellevue Ave (Santa Rosa) Pathway Segment. This contract agreement has a not-to-exceed amount of \$195,000.

Mountain F. Enterprises Contract Agreement No. OP-SV-24-005 was executed to provide On-Call Tree Trimming, Removal, and Arborist Services. This contract agreement has a not-to-exceed amount of \$200,000.

TDG Engineering, Inc. Contract Amendment No. 2 was executed to provide for additional design of maps for pathway trailhead signs, extends the term of the Agreement through October 31, 2024. This amendment is for an amount of \$29,520 for a total not-to-exceed amount of \$199,994.

Ridership

- May Average Weekday ridership: 3,183; 28% over May 2023 and 26% over May 2019 (pre-COVID)
- June Average Weekday ridership: 3,097; 21% over June 2023 and 31% over June 2019 (pre-COVID)
- May 2024 new all-time monthly record; 31% higher than May 2023
- May 2024 ridership 36% over pre-COVID average
- Fiscal Year 2024 tracking 33% higher than Fiscal Year 2023; 19% higher than Fiscal Year 2019

Ridership Highlights

- Fiscal Year Ridership to date: **816,000**; already **14%** above Fiscal Year 2019
- New weekday ridership record, May 29, 2024: **3,688**
- New monthly average weekday ridership record, May 2024: **3,183**
- New monthly ridership record, May 2024: **85,448**

- New monthly bicycle boarding record, May 2024: **11,854**
- New Monthly Pathway trip record: **80,075**

Construction Update

Petaluma North Station

- Preparing for the platform concrete
- Nighttime platform concrete placement

Windsor Extension

- Track construction
- Pedestrian Undercrossing Construction

Groundbreaking Events

General Manager Cumins expressed gratitude to all who joined us for a very special celebration last week as we broke ground on a new segment of the SMART Pathway. The event was held at Andy's Unity Park in Santa Rosa. He thanked SMART staff across the organization for their work to make this special celebration possible. Special thanks to our distinguished speakers – Melanie Bagby, Senator Mike McGuire, Assemblymember Damon Connolly, Andrew Fremier, Stephanie Manieri, and Chris Coursey for their inspiring words. One of my favorite moments of the event was when residents of the Moorland neighborhood helped to us to break ground on this important project.

Larkspur Shuttle - SMART Connect

- SMART Connect shuttle is now operating at the Larkspur Station
- Service **four days** per week:
 - Thursday - Friday: 7:00 AM – 12:30 PM and 1:30 PM – 6:00 PM
 - Saturday – Sunday: 8:30 AM – 11:30 AM and 12:30 – 7:30 PM
 - **Fares:** \$1.50/adults, \$0.75 disabled; youth & seniors ride FREE
 - Riders can book ahead (by app or phone) or just walk-on, space available
- Shuttle meets every train and ferry within 5 minutes
- On the weekends, the van serves The Village and Town Center malls in Corte Madera

August Service Changes

On August 12, SMART will be adding two weekdays round trips:

- 5:34am Southbound / 7:12am Northbound
- 10:54am Southbound / 12:47pm Northbound

These trips are designed to:

- Connect with the busiest morning ferry into SF (7:20am)
- Provide a convenient option for students traveling northbound to school in the morning
- Offer additional midday service, responding to community request for more midday service

Marin County Fair Service

- SMART is partnering with Marin County to run additional service during the 4th of July weekend to support the Marin County Fair and provide post-fireworks service
- Trains will depart Civic Center Station at:
 - 9:55pm Southbound
 - 10:05pm Northbound
 - 10:35pm Northbound
- 5 Days: Weds, July 3rd to Sunday, July 7th

Comments

Rick Luttmann stated he is delighted to hear about the Larkspur Shuttle. However, he is distressed that it is only running 4 days a week.

Mike Pechner suggested naming the rail trail from Larkspur to Santa Rosa, "The Farhad Mansourian Trail" and the segment from Santa Rosa to Cloverdale named "The Cumins Trail".

Eris Weaver stated that she is happy with the groundbreaking of the gap between Rohnert Park and Santa Rosa. Once the segment is completed, she would like to organize a bicycle ride.

Jack Swearingen asked when public comment was reduced to 2 minutes. He stated that there is an update of the Jennings Avenue crossing.

6. Public Comment on Non-Agenda Items

Duane Bellinger thanked the Board and staff for providing shuttle service. The City of Petaluma Council is considering the big picture for the future development of the Corona Development.

General Manager Cumins stated that the Larkspur Shuttle is a pilot program and will continue to evaluate the usage and demand.

Chair Lucan stated that the 2-minute timeframe for public comment has been in existence, it is up to the Board Chair to provide additional time if needed. He reminded the public that public comments can be submitted in writing prior to the meeting.

Rick Luttmann stated that he would be delighted and supports passenger train service from Novato to Suisun.

Jack Swearingen asked for an update on SMART's current position regarding Jennings Avenue crossing.

7. Consent

- a. Accept Monthly Ridership Report – May 2024
- b. Approval of Monthly Financial Reports – April 2024
- c. Authorize the General Manager to Execute Contract Amendment No. 1 to Contract No FN-PS-21-001 with MuniServices, LLC for an amount of \$50,000 for a total not-to-exceed amount of \$193,322 to provide sales and use tax auditing and forecasting services
- d. Authorize the General Manager to Execute Contract Amendment No. 5 to Contract No. FN-PS-21-002 with Sierra-Cedar for an amount of \$252,000 for a total not-to-exceed amount of \$610,200 to provide on-call support and consultant services for SMART's Oracle Enterprise Resource Planning Software
- e. Approve the Procurement of Oracle Licenses in the amount of \$329,412.74 for the period of July 1, 2024 – June 30, 2025
- f. Authorize the General Manager to execute Contract No. OP-SV-24-001 with Hulcher Services, Inc. in an amount not-to-exceed \$300,000 to provide on- Call Equipment Derailment Recovery and Mobile Repair Services for two-year contract with provisions for three (3) optional one-year extensions

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

Comments

Director Sackett asked for clarification on the Clipper purchase decrease. General Manager Cumins responded that it will take several months of data to resolve the decrease in purchases.

Director Fudge stated that there will be an increase in Ferry riders.

MOTION: Director Garbarino moved approval of Consent Agenda as presented. Director Sackett second. The motion carried 11-0 (Director Farac was absent).

8. Adopt Resolutions Approving the Fiscal Year 2024-25 Annual Budget and Declaring and Ratifying the Annual Appropriation Limit for Fiscal Year 2024-25 – *Presented by Chief Financial Officer, Heather McKillop*

Chief Financial Officer, Heather McKillop, stated that the item before you today is to adopt the Fiscal Year 2024/2025 Annual Budget. Staff presented a budget workshop on May 1, 2024 and draft budget on May 15, 2024 and was available for review and provide comments between May 10, 2024 and May 31, 2024. Highlights include:

Passenger Rail and Pathways

For Fiscal Year 2024-2025, total revenues are estimated at \$121.1 million and total expenditures are estimated at \$146.6 million. Expenditures are greater than revenues by \$25.5 million which will reduce the estimated fund balance at the end of Fiscal Year 2024-2025 to \$55.8 million.

Freight Rail

For Fiscal Year 2024-2025, total revenues are estimated at \$1.8 million and total expenditures are estimated at \$1.8 million. Expenditures equal revenues which will leave freight with a zero-fund balance at the end of Fiscal Year 2024-2025.

Changes since May 15, 2024 Draft Document

- Included the revenue and expense in the amount of \$787,545 related to shifting the City of Petaluma McDowell Paving Project into FY25
- Added in the cost of the change order to the McInnis to Smith Ranch Pathway Project in the amount of \$325,000
- Adjusted the fiscal year amount for the Town of Windsor Utility Crossings Project, contractor anticipated to spend \$100,000 in FY24, remaining \$307,100 moving to FY25
- Increased cost for Board Meeting AV Equipment to add in additional mixer for redundancy
- Determined that no expenses would be incurred in FY 24 so the \$10,000 in FY 24 was shifted to FY 25 for a total of \$400,000 in Caltrans Sustainability Communities Competitive Planning Grant for the Quality-of-Life Study. In addition, the actual cost was higher than the estimate so \$36,403 was added in Measure Q funds for a total project cost of \$436,403
- Debudgeted the \$50,000 planning project and reallocated the funds to the Quality-of-Life Study, and added funds to finish the design of the Wayfinding Project
- Reduced the cost of the public information display signs project from \$550,000 to \$450,000 considering the engineer's estimate and used those funds for the increases in costs to the wayfinding project
- Debudgeted some of the funds for parts under the Vehicle Maintenance and Maintenance of Way budgets. This is due to a change in inventory methodology.
- Reclassified one (1) position from Inventory and Parts Clerk to Materials Sourcing Specialist
- Included funds that were budgeted in FY 24 for four (4) non-revenue vehicles that won't be

- delivered until FY25, increasing the non-revenue vehicle amount by \$350,654
- Highlighted text in the Appendix E – Statement of Investment Policy represent changes to the document

Comments on the Draft Budget

The public comment period was open between May 10, 2024, and May 31, 2024. We received six (6) comments. None of the comments resulted in changes to the budget.

Staff recommends approving Resolution No. 2024-19 – Fiscal Year 2024-25 Annual Budget and Resolution No. 2024-20 – Annual Appropriations and Appendix E – Statement of Investment Policy.

Lastly, Chief Financial Officer McKillop congratulated Clair Springer for completing her first budget.

MOTION: Director Garbarino moved to Adopt Resolutions Approving the Fiscal Year 2024-25 Annual Budget and Declaring and Ratifying the Annual Appropriation Limit for Fiscal Year 2024-25 as presented. Director Rogers second. The motion carried 11-0 (Director Farac was absent).

9. Authorize the General Manager to execute Contract Amendment No. 2 to Contract No. OP-PS-21-002 with Portola Systems for an amount of \$622,540 for a total not-to-exceed amount of \$1,319,000 to extend ongoing management and maintenance support for the existing SMART Station Network by two additional one-year extensions - *Presented by Information System Manager, Bryan Crowley*

Information System Manager Bryan Crowley stated that Contract Amendment No. 2 to Contract No. OP-PS-21-002 with Portola Systems for an amount of \$622,540 for a total not-to-exceed amount of \$1,319,000 to extend the contract to June 30, 2026.

This Contract is to extend ongoing management and maintenance support for the existing SMART Station Network. SMART’s station network encompasses the configuration of the communication transmission system and network equipment necessary to allow for data, voice, and video transmission from station devices to the SMART Data Center. SMART’s station network must be monitored and maintained 24 hours a day, 7 days per week, and 365 days per year to ensure that SMART maintains connectivity to all station network resources required for running a safe and efficient operation.

Staff recommends authorizing the General Manager to execute Contract Amendment No. 2 with Portola Systems in an amount of \$622,540.

MOTION: Director Rogers moved to Authorize the General Manager to execute Contract Amendment No. 2 to Contract No. OP-PS-21-002 with Portola Systems for an amount of \$622,540 for a total not-to-exceed amount of \$1,319,000 to extend ongoing management and maintenance support for the existing SMART Station Network by two additional one-year extensions as presented. Director Pahre second. The motion carried 11-0 (Director Farac was absent).

10. Authorize the General Manager to execute Contract Amendment No. 1 to Contact No. OP-IS-20-002 with Intelligent Technology Solutions, LLC (ITS) for an amount of \$428,000 for a total not-to-exceed amount of \$1,211,000 to provide an optional two-year extension for Maximo Software as a Service (SaaS) and associated support services - *Presented by Information System Manager, Bryan Crowley*

Information System Manager, Bryan Crowley stated that Contract Amendment No. 1 to Contract No. OP-PS-20-002 with Intelligent Technology Solutions, LLC (ITS) for an amount of \$428,000 for a total not-to-exceed amount of \$1,211,000 to extend the contract to June 30, 2026.

This Contract is for ongoing maintenance support and development of the IBM Maximo Maintenance Management System. The Federal Railroad Administration (“FRA”) requires each railroad to ensure compliance with maintenance of both fixed and mobile assets. SMART uses Maximo reports to help maintain compliance with these requirements.

Staff recommends authorizing the General Manager to execute Contract Amendment No. 1 with ITS for IBM Maximo Software as a Service (SaaS) and associated support services for an amount of \$428,000.

MOTION: Director Paulson moved to Authorize the General Manager to execute Contract Amendment No. 1 to Contact No. OP-IS-20-002 with Intelligent Technology Solutions, LLC (ITS) for an amount of \$428,000 for a total not-to-exceed amount of \$1,211,000 to provide an optional two-year extension for Maximo Software as a Service (SaaS) and associated support services as presented. Director Colin second. The motion carried 11-0 (Director Farac was absent).

11. Adopt a Resolution Authorizing the General Manager to Execute Change Order 004 to Contract No. CV-BB-23-002 with Ghilotti Brothers in an amount of \$827,571 and Contract Extension to March 31, 2025, for the Construction of Non-Motorized Pathway between McInnis Parkway and Smith Ranch Road, San Rafael - *Chief Engineer, Bill Gamlen*

Chief Engineer, Bill Gamlen provided a presentation which is located on SMART’s website. Highlights include:

Non-Motorized Pathway between McInnis Parkway and Smith Ranch Road, San Rafael

- Project Location
- Project Overview
- Project Components
 - 1 mile of pathway
 - Elements: Pedestrian bridge, grade crossing improvements, paving, striping, and fencing
 - Contractor: Ghilotti Brothers, Inc.
 - Construction began: September 1, 2023.
- Site Condition Challenges
- Modular Block Wall
- Site Conditions
- Gravity Block Wall
- Recommendations
 - Scope: Redesign of retaining walls; Preserves the integrity of the railroad embankment; Minimizes environmental impacts
 - Time extension: Field Work: January 15, 2025; Contract completion: March 31, 2025
 - Cost Increase: \$827,571.48

Staff recommends approving Resolution No. 2024-21 authorizing the General Manager to execute Change Order 004 with Ghilotti Brothers in an amount of \$827,571.48.

Comments

Director Coursey asked for clarification of the pathway location. Mr. Gamlen responded that it was the best option to build the pathway.

Director Colin asked for clarification cost of the new blocks. Mr. Gamlen responded that the Contractor priced all the work.

Director Paulson asked that given the new conditions and looking ahead are there any anticipated maintenance costs. Mr. Gamlen responded that a bridge across the creek was built high with respect to the roadway and the track to get into the pathway alignment.

Director Sackett thanked staff and stated that this change order is going to serve the community and they are very excited for the opening.

MOTION: Director Sackett moved to Adopt a Resolution Authorizing the General Manager to Execute Change Order 004 to Contract No. CV-BB-23-002 with Ghilotti Brothers in an amount of \$827,571 and Contract Extension to March 31, 2025, for the Construction of Non-Motorized Pathway between McInnis Parkway and Smith Ranch Road, San Rafael as presented. Director Colin second. The motion carried 11-0 (Director Farac was absent).

12. Appointment of General Counsel and Approve Appointment Agreement, Effective July 8, 2024 – *Presented by General Manager Cumins*

General Manager Cumins stated that he is happy to present this item. The Board is aware that Tom Lyons, General Counsel will be retiring soon. This is a critical position and generally not easy to fill. SMART's Assistant General Counsel, Jessica Sutherland applied for the position and is eager to fill this role.

Ms. Sutherland has over 21 years of legal experience, including nearly eight years as the Assistant General Counsel for SMART. Ms. Sutherland joined SMART in 2016 before SMART began to operate passenger service and has assisted the SMART team through the transition from implementation and construction to a fully operating railroad. Ms. Sutherland has been advising the Board, executive team, and divisions within SMART on regulatory and legal matters and represents SMART in litigation matters. She has been working closely with the General Counsel in managing the Legal Department, developing legal strategy and budget.

In May, the Board interviewed Jessica for the General Counsel position. The Board Chair formed an Ad Hoc Committee comprised of Chair Lucan, Director Pahre, and Director Sackett to negotiate terms of the employment contract. The Ad Hoc Committee unanimously recommends approving the employment agreement appointing Jessica Sutherland as SMART's General Counsel effective July 8, 2024.

Comments

Director Sackett said that SMART is fortunate to have Ms. Sutherland and her credentials are impeccable.

Director Pahre stated that SMART is fortunate that Ms. Sutherland decided to remain at SMART. People who are overly qualified choose to go someplace else, and we appreciated that she chose to stay. She thanked District Counsel Lyons for his mentorship and staff.

Director Garbarino stated that she had the privilege to go on a field trip with Ms. Sutherland to a controversial topic and she described the topic was with grace and intelligence, and the information was absorbed because of the way she explained it.

Director Rabbitt stated that this is the ideal process to have succession planning within the organization. He thanked Mr. Lyons for picking a great person to come after and Ms. Sutherland for stepping up and look forward to continuing.

General Manager Cumins stated that Ms. Sutherland's mother and son are in the audience.

District Counsel Lyons stated that when the Board requested, he do some succession planning, he was at a loss as to where he was going to find somebody that could come and help in a department of 2. The Board has made a great selection. He had the privilege and the benefit of having Ms. Sutherland who does an excellent job of filling in when needed.

Lastly, Ms. Sutherland thanked the Board for giving her the opportunity. She said that she has been working with Mr. Lyons on variety of issues and phases of SMART. She is very excited to fill the role of District Counsel. She thanked staff for their support.

MOTION: Director Sackett moved to Appointment of General Counsel and Approve Appointment Agreement, Effective July 8, 2024 as presented. Director Pahre second. The motion carried 11-0 (Director Farac was absent).

Director Rogers left 2:35pm

13. Authorize the General Manager to Award Contract No. PL-PS-24-002 with Fehr & Peers for an amount not-to-exceed of \$438,311 to provide the technical services and support for the development of SMART's Quality of Life and Economic Impact Assessment - *Presented by Planning Manager, Emily Betts*

Planning Manager, Emily Betts provided a presentation which is located on SMART's website. Highlights include:

Quality of Life and Economic Impact Assessment Contract Award

- Project Timeline
 - March 2023 – SMART applied for a Caltrans Sustainable Transportation Planning Grant to fund a quality of life and economic impact study
 - August 2023 – Grant award announcement
 - September 2023 – SMART Board approved resolution for grant agreement
 - February 2024 – Grant agreement execution and notice to proceed issued by Caltrans
 - March 2024 – SMART issued the RFP for consultant services
 - June 2024 (present) – SMART staff seek board approval for technical support for SMART's Quality of Life and Economic Impact Assessment
 - July 2024 – SMART and Fehr& Peers kick off the project
 - Summer 2025 – Final Assessment Completed
- Purpose
 - SMART is unique
 - SMART is young
 - SMART is growing
- Goal
 - to provide SMART and its patrons, community members, and partners with a more comprehensive, data-driven picture of what benefits are generated for Sonoma and Marin by completing and operating the SMART system.

- Quality of Life Indicators
 - Mobility
 - Land Use
 - Economy
 - Equity
 - Access to Opportunity
 - Environmental/ Safety/ Public Health
- Project Scope
 - Methodology
 - Outreach
 - Quality of Life and Economic Impact Study
- Next Step
 - SMART and Fehr & Peers will kick off this work in July 2024. Staff will return to the Board throughout the life of the project for a project overview and updates and at critical project milestones

Staff recommends authorizing the General Manager to Award Contract No. PL-PS-24-002 to Fehr & Peers for SMART’s Quality of Life and Economic Impact Assessment, with a total not-to-exceed amount of \$438,311.

Comments

Duane Bellinger stated that the submitted public comment for this item should be addressed to the State of California.

Director Colin is very excited for the outcome of this report and staff selected an excellent Consultant.

Director Sackett stated that proposal exceeded her expectations. This report is going to be an excellent guide in making strategic decisions.

Director Garbarino stated that the number of con comments casually that people give you have now been totally minimalized by the positive comments, and I think the information that will be obtained, and of course disseminated into the public and will help to further that positivity.

Director Coursey stated that this report will help understand the benefits of what SMART brings to the North Bay.

Vice Chair Bagby stated that she is looking forward to the report. She suggested that the Consultants to review the Great Redwood Trail Plan Appendices No. 1 - Economic Development Projections. She would like this report to be a living document and for SMART to continue to work with other partners throughout the region to meet the economic development goals.

MOTION: Director Colin moved to Authorize the General Manager to Award Contract No. PL-PS-24-002 with Fehr & Peers for an amount not-to-exceed of \$438,311 to provide the technical services and support for the development of SMART’s Quality of Life and Economic Impact Assessment as presented. Director Fudge second. The motion carried 10-0 (Directors Farac and Rogers absent).

14. Adopt a Resolution Approving SMART’s Participation in the No-Cost and Reduced Cost Interagency Transfer Pilot Program - *Presented by Chief Financial Officer, Heather McKillop*

Chief Financial Officer, Heather McKillop stated that the item for approval today is for SMART to participate in the No-cost and Reduced Cost Interagency Transfer Pilot Program. This pilot program offers all riders using the Next Generation Clipper System a discount of up to \$2.50 each time they make an interagency transfer. SMART will be responsible for the first \$0.50 of the discount. The Metropolitan Transportation Committee (MTC) will reimburse the remaining discount specified in the Memorandum of Understanding through the pilot program.

Staff recommends adopting Resolution No. 2024-18 Approving SMART’s Participation in the No-Cost and Reduced Cost Interagency Transfer Pilot Program.

Comments

Chair Lucan clarified what is being recommended is what SMART has been doing for quite some time at a higher rate than the general recommendation. Ms. McKillop responded yes, and SMART will be receiving money back.

MOTION: Director Pahre moved to Adopt a Resolution Approving SMART’s Participation in the No-Cost and Reduced Cost Interagency Transfer Pilot Program as presented. Director Rabbitt second. The motion carried 10-0 (Directors Farac and Rogers absent).

15. Metropolitan Transportation Commission Regional Mapping and Wayfinding Project and Downtown Santa Rosa Prototype (*Information*) – *Presented by Planning Manager, Emily Betts*

Planning Manager, Emily Betts introduced MTC Project Manager, Gordon Hansen. Mr. Hansen provided a presentation which is located on SMART’s website. Highlights include:

Regional Mapping and Wayfinding Project Implementation Updates

- Wayfinding
 - Identity
 - Directional Signage
 - Accessibility
 - Maps
 - Information and Schedule
 - Digital Tools
- Part of the Transit Transformation Action Plan
 - Fares and Payments
 - Customer Information
 - Transit Network
 - Accessibility
 - Funding
- Goals and Schedule
 - Better Information for Customers
 - Better Operations for Transit Providers
 - Better Outcomes for the Region
- Phase 3 Iterative Design Process
 - Wayfinding Context
 - Design Standards

- Prototypes
- Regional Network Identity elements
 - Colors
 - Modal Icon Design
 - Modal Icons are the most important symbols
- New Sign Family
 - The regional network identity creates a design language for prototype wayfinding signs
- Location Overview
 - Prototype locations
- Santa Rosa Transit Mall and SMART Station
 - Threshold Markers
 - Customer Information
- Prototype Evaluation Objectives
 - Performance Indicators
 - Goals (Near-Term)
 - Goals (Long-Term)
- Public Engagement Prioritization
 - Transit Customers
 - Stakeholder Groups
 - Transit Operators
 - MTC Groups
- Prototype Evaluation Methods
 - Method
 - Definition
- Pilot Projects
 - Purpose
 - Pilot Approach Overview
- Experience at complex transfer stations (2025)
 - Goals
- Experience on local and regional bus routes (2026)
 - Goals
- Why Sonoma and Solano Counties
 - Context
 - Opportunity
 - Proposal
- Agency-led Project 2025+
 - MTC Provides
 - Agency Provides
- Next Steps
 - June 2024 -RNM Committee & Customer Advisory Group
 - Mid 2024 - Collaborative process to identify new pilot locations
 - Fall 2024 - Install prototypes and conduct evaluation to inform V1 standards
 - Spring 2025 - V1 Standards available for pilots and agency-led projects
 - 2025+ - Test experience at complex transfer stations regionally
 - 2026+ - Test experience on selected agencies/routes in Sonoma/Solano Counties

Comments

Director Coursey asked for clarification of how you add transit elements without confusing people. Mr. Hansen responded that this program is focused on creating new standards for bus stop signs. Director

Coursey asked how this pilot project prototype will work with SMART’s Wayfinding system. Mr. Hansen responded that he is working closely with SMART staff, and they will ensure that there is not conflict or overlap between the signs.

Director Fudge stated that SMART has spent time on wayfinding and branding. She appreciates the placement of the visual sign; this will help passengers getting off the train see the bus system sign.

Vice Chair Bagby stated that Sonoma County Transportation Authority is working on standardizing the Transit App. She asked how this plan would integrate the signage with the people who are using the App. Mr. Hansen responded that data will be collected to evaluate.

Director Sackett asked if the Wayfinding project process will be slowed down due to this pilot program. Ms. Betts responded that SMART is working on three different Wayfinding projects: 1) Pathway Wayfinding; 2) Stations Area Wayfinding; and 3) Real-Time signs at stations. The goal is to have Pathway signs and Station signs.

Chair Lucan asked if the standard will be in a package available to agencies and if there will be a preferred contractor that agencies would need to utilize. Mr. Hansen responded that a benchmark of contractors will be established for reference.

Duane Bellinger asked if visual impairment people are being considered. Mr. Hansen responded it was discussed to integrate the voices and perspectives of people with disabilities across the spectrum of types of disability. An accessibility consultant has joined the project team and a working group will be meeting in July.

- 16. Next Regular Meeting Board of Directors, July 17, 2024 – 1:30 PM – 5401 Old Redwood Highway, 1st Floor, Petaluma, CA 94954
- 17. Adjournment – Meeting adjourned at 3:30pm

Respectfully submitted,

Leticia Rosas
Clerk of the Board

Approved on: _____



July 17, 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
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

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

SUBJECT: Monthly Ridership Report – June 2024

Dear Board Members:

RECOMMENDATIONS: Accept Monthly Ridership Report

SUMMARY:

We are presenting the monthly ridership report for activity for the month of June 2024. This report shows trends in ridership for SMART by tracking Totals, Average Weekday riders, and Average Saturday riders, Average Sunday/Holiday riders, as well as bicycles and mobility devices.

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 June 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

Attachment(s): Monthly Ridership Report – June 2024

JUNE 2024 SMART RIDERSHIP REPORT

June 2024 saw ridership levels holding steady, with average weekday ridership at 3,130, down 2% from May. Average Saturday and Sunday ridership increased by 9% and decreased by .4%, respectively, from the previous month. Total monthly ridership was 80,434, a 20% increase over last June, and 44% over June 2019 (pre-COVID). Average Saturday and Sunday ridership for June 2024 reached 112% and 113%, respectively over June 2019. SMART finished Fiscal Year 2024 with a record 851,115 riders, 19% higher than the previous annual high in FY19.

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 the current schedule of 38 trips per weekday. In May 2023, SMART added two evening trips on Friday and Saturday, known as the Starlighter. On October 2nd, SMART suspended the Starlighter service but increased weekend service, running 16 trips total on both Saturday and Sunday. In August 2024, SMART will add two additional round trips for a total of 42 trips each weekday.

The tables below present data for June 2023 and 2024 year-over-year, and a Fiscal Year comparison (July-June). Total ridership for FY24 was up 33% over FY23.

MONTHLY TOTALS YEAR-OVER-YEAR	JUNE 2023	JUNE 2024	% Change
Ridership	67,162	80,434	20%
Fare Payments (Clipper + App Only)*	48,809	45,468	-7%
Average Weekday Ridership	2,552	3,130	23%
Average Saturday Ridership	1,479	1,799	22%
Average Sunday Ridership	1,277	1,769	38%
Bicycles	9,428	10,525	12%
Mobility Devices	146	214	47%

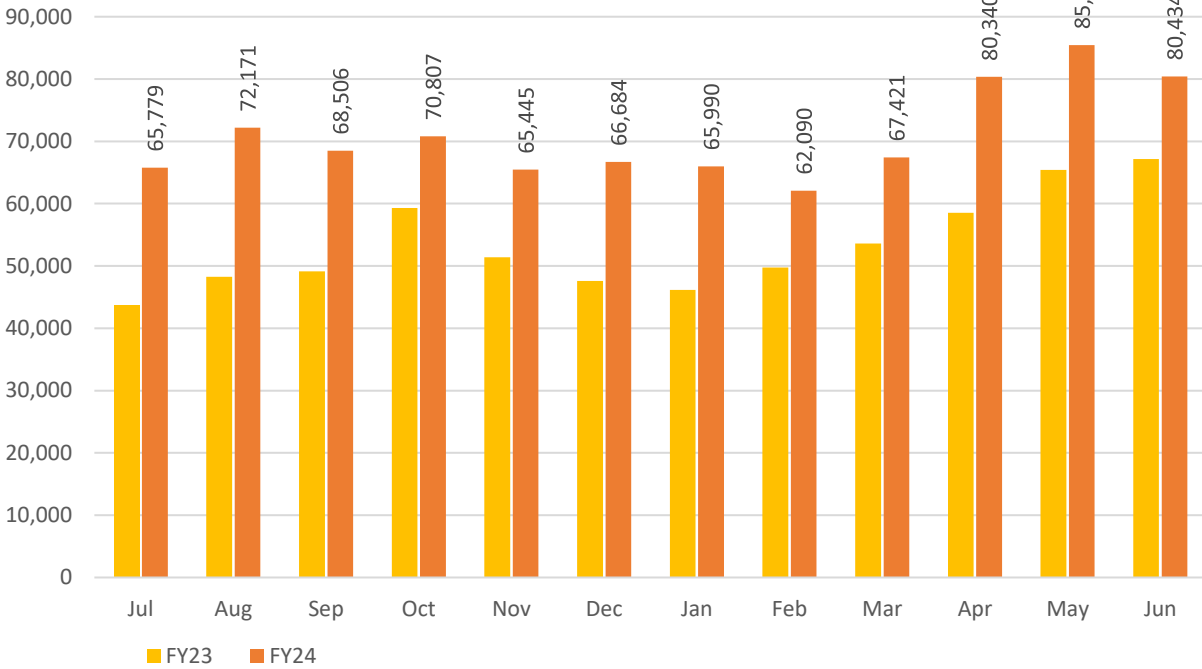
**Discrepancy between total ridership change and fare payments change due to launch of Free Fare program for youth and seniors on April 1.*

FISCAL YEAR (Jul - Jun)	Fiscal Year 2023	Fiscal Year 2024	% Change
Ridership	640,099	851,115	33%
Fare Payments (Clipper + App Only)	520,583	614,011	18%
Average Weekday Ridership	2,111	2,774	31%
Average Saturday Ridership	1,071	1,476	38%
Average Sunday Ridership	860	1,248	45%
Bicycles	92,741	114,747	24%
Mobility Devices	1,654	1,879	14%

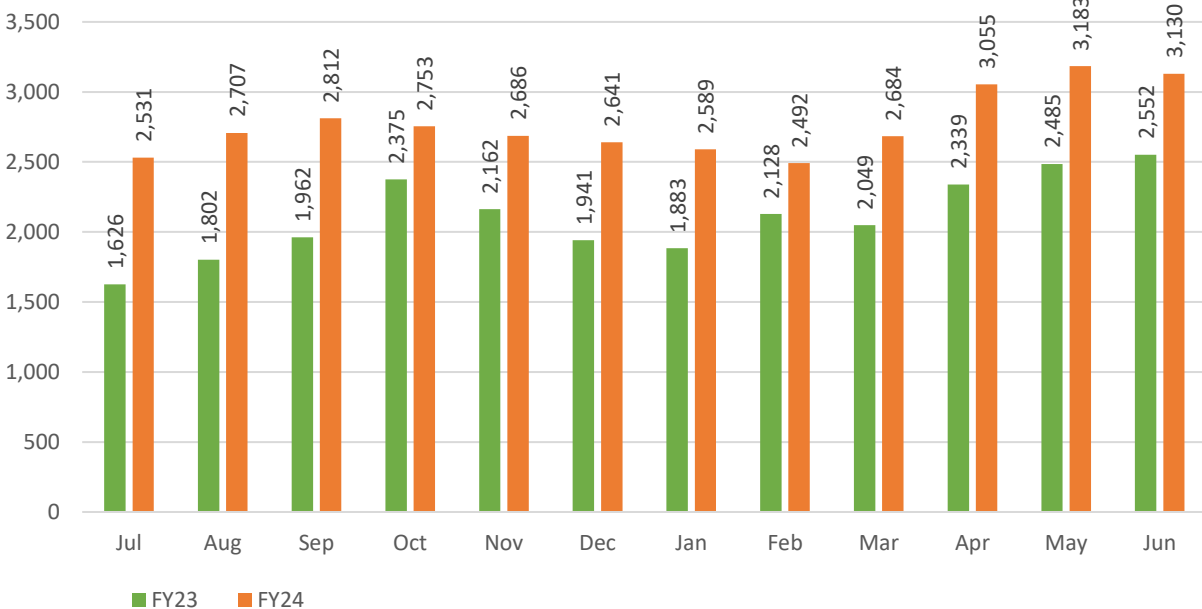
JUNE 2024 SMART RIDERSHIP REPORT

The following charts compare the average weekday ridership, average weekend ridership, boardings by day of week, and monthly totals for FY23-FY24.

SMART Monthly Ridership (FY23 - FY24)

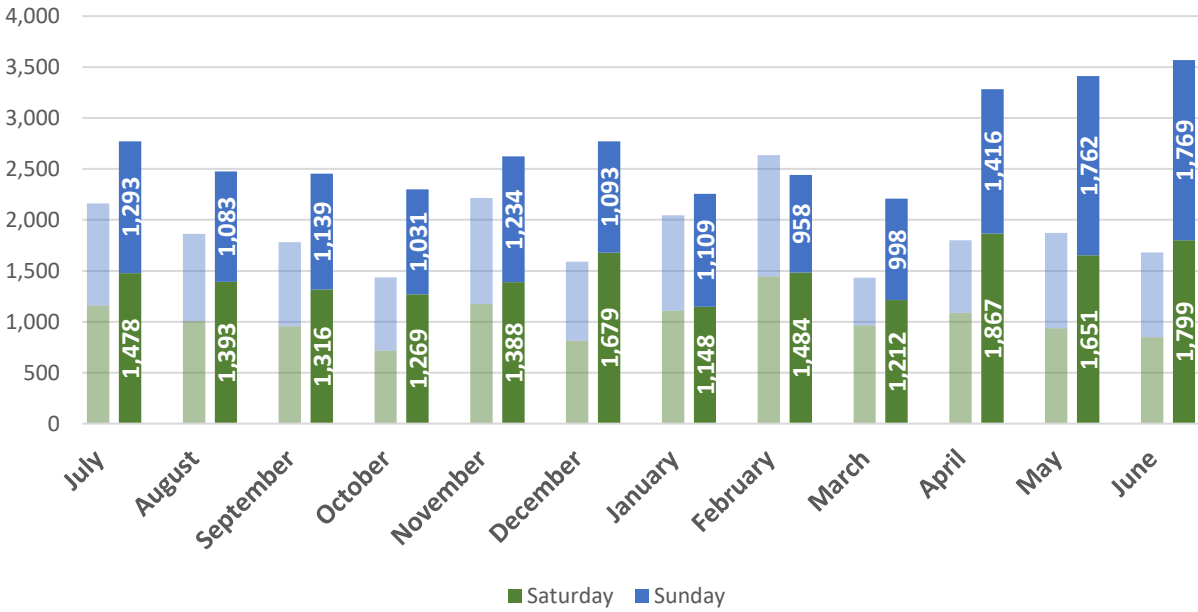


SMART Average Weekday Ridership (FY23 - FY24)

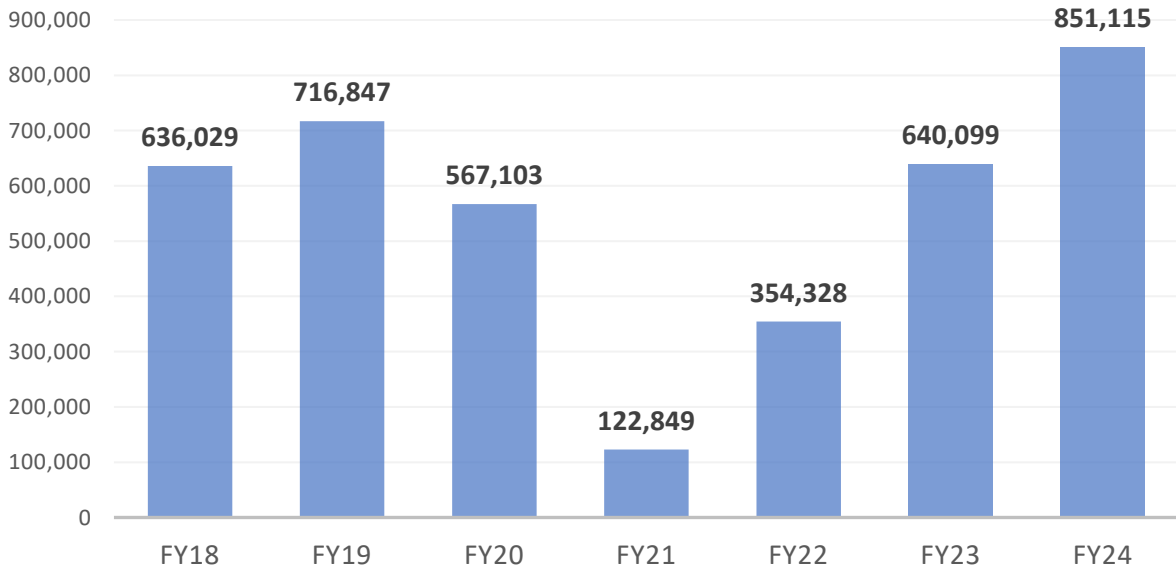


JUNE 2024 SMART RIDERSHIP REPORT

Average Weekend Boardings (Pre-Pandemic v FY24)



SMART Annual Ridership





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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July 17, 2024

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

SUBJECT: Monthly Financial Status

Dear Board Members:

RECOMMENDATION: Approve Monthly Financial Reports – May 2024

SUMMARY:

We have provided budgeted revenues and actual expenditures for both passenger rail and freight in separate charts in the attached document. The actual column reflects revenues and expenditures for eleven (11) months of Fiscal Year 2024 (July – May). 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.

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. The amended budget approved by the Board on February 21st is reflected in this financial report.

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 2024.

Sincerely,

/s/
Heather McKillop
Chief Financial Officer

Attachment(s):

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



**MONTHLY FINANCIAL STATUS
MAY 2024**

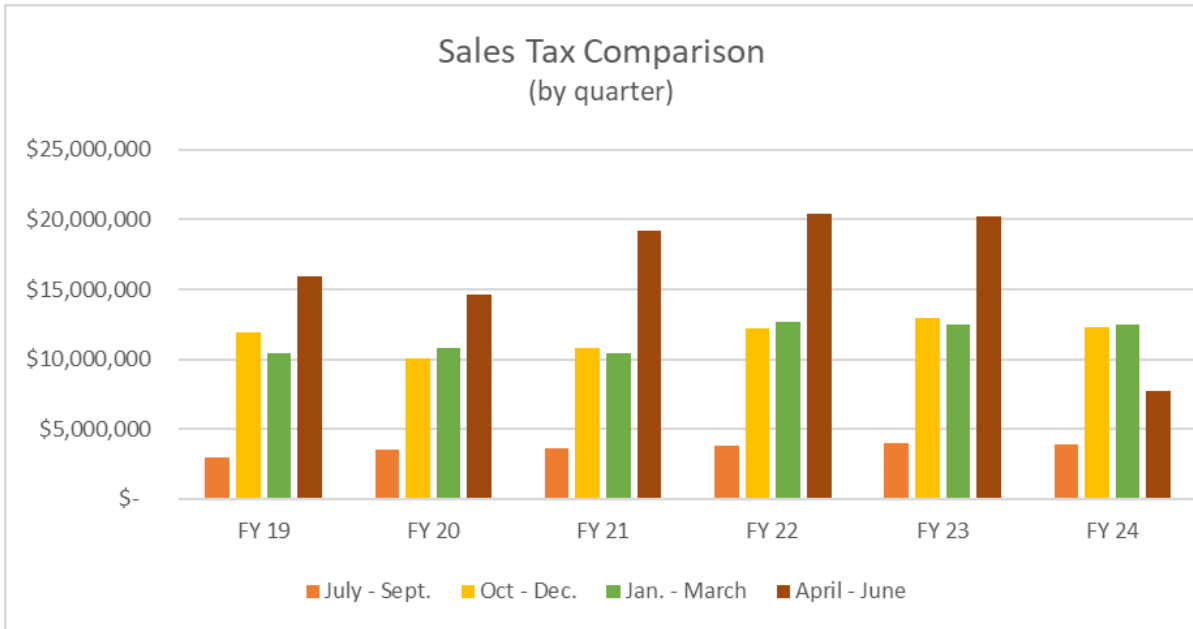
PASSENGER REVENUES

	FY 2023-24 Approved Budget	Actual	Amount Over / (Under) Budget
Revenues			
Passenger Rail			
Sales/Use Taxes	\$ 50,031,000	\$ 36,542,379	\$ (13,488,621)
Interest and Lease Earnings	\$ 1,121,647	\$ 2,820,370	\$ 1,698,723
Miscellaneous Revenue	\$ 5,659	\$ 368,023	\$ 362,364
Passenger Fares	\$ 1,803,384	\$ 2,022,223	\$ 218,839
Parking Fares	\$ 15,000	\$ 10,505	\$ (4,495)
State Grants	\$ 47,746,437	\$ 3,063,129	\$ (44,683,308)
Charges For Services	\$ 75,637	\$ 82,434	\$ 6,797
Federal Funds (Non-COVID Relief)	\$ 5,749,081	\$ 4,692,044	\$ (1,057,037)
Other Governments	\$ 5,014,821	\$ 298,203	\$ (4,716,618)
Passenger Rail Subtotal	\$ 111,562,666	\$ 49,899,310	\$ (61,663,356)

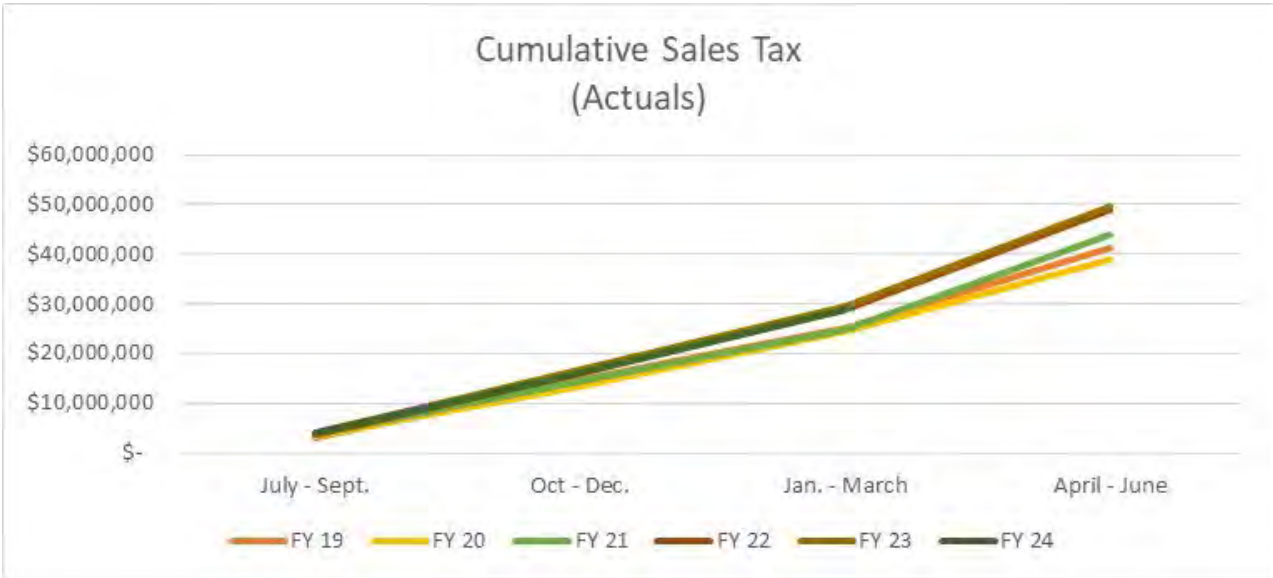
**Measure Q Sales Tax
Fiscal Year (FY) 2023/2024**

Time Period	July - Sept.	Oct - Dec.	Jan. - March	April - June
Revised Forecast (Amended)	\$ 3,942,911	\$ 12,335,899	\$ 12,502,411	\$ 21,249,779
Actual	\$ 3,942,911	\$ 12,335,899	\$ 12,502,411	\$ 7,761,158
Difference	\$ -	\$ -	\$ -	\$(13,488,621)

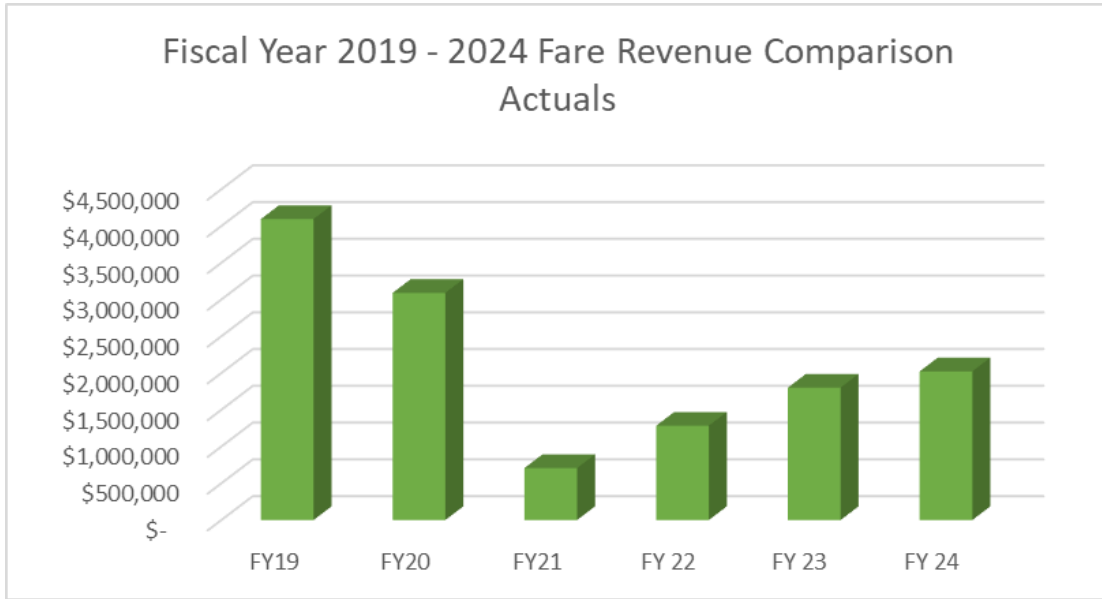
**Fiscal Year 2019-2024 Net Sales Tax Comparison
(by Quarter)**



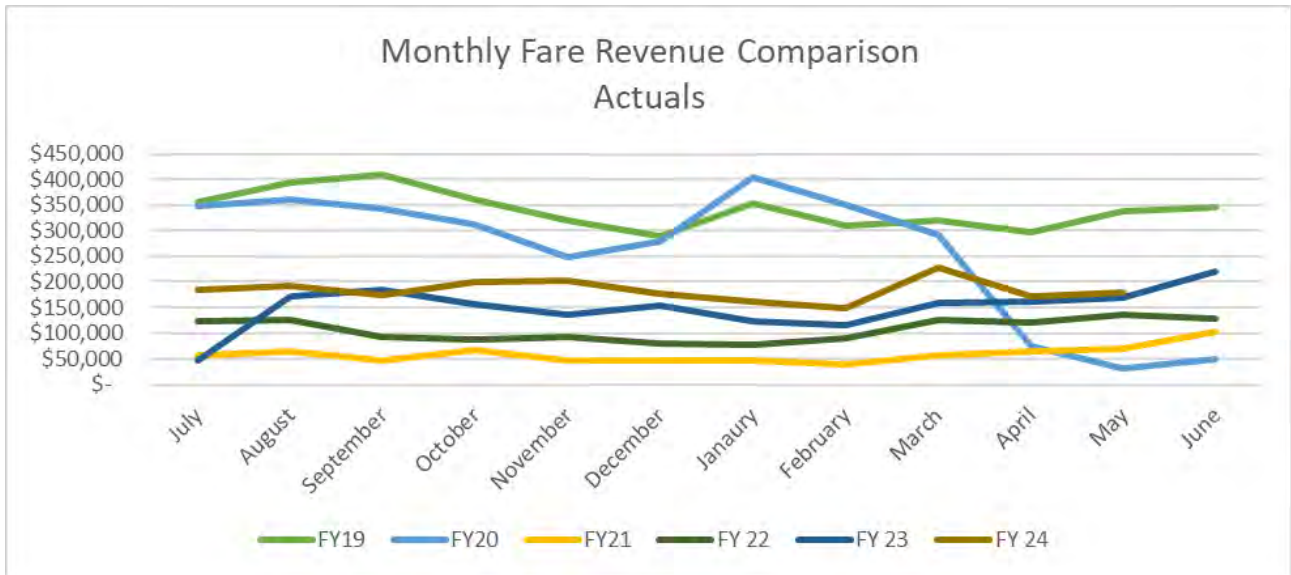
Fiscal Year 2019-2024 Cumulative Sales Tax Comparison



Fiscal Year 2019-2024 Fare Revenue Comparison



Fiscal Year 2019-2024 Monthly Fare Revenue Comparison



PASSENGER EXPENDITURES

	FY 2023-24 Approved Budget	Actual	Amount Over / (Under) Budget
Passenger Expenditures			
Administration			
Salaries & Benefits	\$ 6,560,493	\$ 5,526,136	\$ (1,034,357)
Services & Supplies	\$ 11,231,781	\$ 5,391,137	\$ (5,840,644)
Administration Subtotal	\$ 17,792,274	\$ 10,917,273	\$ (6,875,001)
Operations			
Salaries & Benefits	\$ 18,782,237	\$ 16,253,376	\$ (2,528,861)
Services & Supplies	\$ 7,442,024	\$ 4,726,381	\$ (2,715,643)
Operations Subtotal	\$ 26,224,261	\$ 20,979,757	\$ (5,244,504)
Capital			
Salaries & Benefits	\$ 704,575	\$ 490,065	\$ (214,510)
Services & Supplies	\$ 5,043,882	\$ 2,428,035	\$ (2,615,847)
Capital Subtotal	\$ 5,748,457	\$ 2,918,100	\$ (2,830,357)
Total Passenger Expenditures	\$ 49,764,992	\$ 34,815,130	\$ (14,949,862)

Passenger (Capitalized) Expenditures			
Buildings & Capital Improvements	\$ 44,007,112	\$ 26,288,200	\$ (17,718,912)
Land	\$ -	\$ -	\$ -
Machinery & Equipment	\$ 3,763,511	\$ 1,181,496	\$ (2,582,015)
Infrastructure	\$ 2,580,325	\$ 1,336,622	\$ (1,243,703)
Total Passenger (Capitalized) Expenditures	\$ 50,350,948	\$ 28,806,318	\$ (21,544,630)

Passenger Expenditures + Capitalized	\$ 100,115,940	\$ 63,621,448	\$ (36,494,492)
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FREIGHT REVENUES

	FY 2023-24 Approved Budget	Actual	Amount Over / (Under) Budget
Revenues			
Freight			
Sales/Use Taxes	\$ -		\$ -
Interest and Lease Earnings	\$ 270,000	\$ 265,323	\$ (4,677)
Miscellaneous Revenue	\$ 253,000	\$ 251,410	\$ (1,590)
Freight Traffic - Storage	\$ 826,200	\$ 652,655	\$ (173,545)
Parking Fares	\$ -		\$ -
State Grants	\$ 1,478,606		\$ (1,478,606)
Charges For Services	\$ -		\$ -
Federal Funds (Non-COVID Relief)	\$ -		\$ -
Other Governments	\$ -	\$ -	\$ -
Freight Subtotal	\$ 2,827,806	\$ 1,169,388	\$ (1,658,418)

FREIGHT EXPENDITURES

	FY 2023-24 Approved Budget	Actual	Amount Over / (Under) Budget
Freight Expenditures			
Administration			
Salaries & Benefits	\$ -	\$ -	\$ -
Services & Supplies	\$ -	\$ -	\$ -
Administration Subtotal	\$ -	\$ -	\$ -
Operations			
Salaries & Benefits	\$ 920,876	\$ 771,583	\$ (149,293)
Services & Supplies	\$ 1,021,234	\$ 535,610	\$ (485,624)
Operations Subtotal	\$ 1,942,110	\$ 1,307,193	\$ (634,917)
Capital			
Salaries & Benefits	\$ -	\$ -	\$ -
Services & Supplies	\$ 855,696	\$ 655,297	\$ (200,399)
Capital Subtotal	\$ 855,696	\$ 655,297	\$ (200,399)
Total Freight Expenditures	\$ 2,797,806	\$ 1,962,490	\$ (835,316)

Freight (Capitalized) Expenditures			
Buildings & Capital Improvements	\$ -	\$ -	\$ -
Land	\$ -	\$ -	\$ -
Machinery & Equipment	\$ -	\$ -	\$ -
Infrastructure	\$ -	\$ -	\$ -
Total Freight (Capitalized) Expenditures	\$ -	\$ -	\$ -

Freight Expenditures + Capitalized	\$ 2,797,806	\$ 1,962,490	\$ (835,316)
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CAPITAL PROJECTS

Capital Project Report	May-24				
	Total Project Budget	Expended in Prior Fiscal Years	Budgeted in FY24	Remaining to be Budgeted in Future Years	Project Status
PASSENGER RAIL PROJECTS					
Windsor Extension	\$ 68,500,000	\$ 24,256,464	\$ 26,163,452	\$ 18,080,084	Under construction.
-Windsor Pedestrian Undercrossing	\$ 4,300,000	\$ -	\$ 4,300,000	\$ -	Under construction as part of the Windsor Extension project.
-Town of Windsor Utility Crossing	\$ 407,100	\$ -	\$ 307,100	\$ 100,000	Under construction as part of the Windsor Extension project.
Windsor to Healdsburg Extension	\$ 160,400,000	\$ -	\$ 200,000	\$ 160,200,000	Preliminary work is planned to start in 2024.
Sonoma County Pathway Connector Project Design: Petaluma to Penngrove & Rohnert Park to Santa Rosa	\$ 4,871,770	\$ 3,179,720	\$ 1,585,859	\$ 106,191	These pathway segments have been combined with the construction of the Petaluma North Station.
Marin & Sonoma Pathway Design & Permitting	\$ 10,660,900	\$ 3,388,763	\$ 2,876,915	\$ 4,395,222	Conducting engineering design to prepare for construction and pursuing environmental permits.
McInnis Pkwy. at Bridgewater Dr. to Smith Ranch Rd. Construction	\$ 4,658,878	\$ -	\$ 3,635,455	\$ 1,023,423	Under construction.
Joe Rodota to 3rd St. Design and Construction	\$ 450,779	\$ 45,688	\$ 404,991	\$ -	In design - Construction will depend on grant execution.
Hannah Ranch Rd to Vintage Way Pathway Construction	\$ 6,084,521	\$ -	\$ -	\$ 6,084,521	Design and permitting are planned for future years, dependent on grant funds.
Guerneville Rd to Airport Blvd Pathway Construction	\$ 14,595,629	\$ -	\$ 23,100	\$ 14,572,529	Pursuing NEPA clearance, construction moved to a future year.
Puerto Suello Pathway Design and Permitting	\$ 708,227	\$ -	\$ 708,227	\$ -	Preparing a Request for Proposal (RFP) to hire a design consultant.
Petaluma North Station	\$ 39,088,170	\$ 1,315,027	\$ 12,729,059	\$ 25,044,084	Construction is underway. The contract includes the construction of the Sonoma County Pathway projects.
Payran to Lakeville Pathway - Design & Construction	\$ 1,209,818	\$ 1,018,674	\$ 191,144	\$ -	Construction is complete.
Basalt Creek Timber Bridge Replacement	\$ 630,103	\$ 120,978	\$ 67,965	\$ 441,160	Finalizing design and working with regulatory agencies to secure environmental permits.
San Antonio Tributary Timber Trestle Replacement	\$ 1,075,264	\$ 130,201	\$ 68,493	\$ 876,570	Finalizing design and working with regulatory agencies to secure environmental permits.
FREIGHT RAIL PROJECTS					
Brazos Branch Bridge Repairs	\$ 1,812,234	\$ 711,538	\$ 755,696	\$ -	Construction is complete for the first phase, design work on the second phase is complete, currently purchasing bridge timbers for second phase.

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	\$ 20,821,248
Sonoma County Investment Pool *	\$ 90,612,626
Total Cash on Hand	\$111,433,874
<u>Reserves</u>	
Self-Insured	\$ 2,370,675
OPEB/ CalPERS	\$ 4,574,676
Operating Reserve	\$ 11,278,617
Capital Sinking Fund	\$ 10,625,000
Corridor Completion	\$ 7,000,000
Total Reserves	\$ 35,848,968
Cash Balance	\$ 75,584,906
Less: Current Encumbrances	\$ (9,243,973)
Balance	\$ 66,340,933
Less: Estimated FY24 Year-end Fund Balance	\$ (81,342,877)
Remaining Balance	\$ (15,001,944)
* Doesn't include trustee accounts	



Contract Summary

Active contracts as of May 31, 2024

PASSENGER RAIL

Contractor	Scope	Fiscal Year 23/24 Projected	Fiscal Year 23/24 Actuals
A.J. Janitorial Service	Janitorial Services for all Stations, Roblar, ROC, and Fulton	\$ 114,000	\$ 100,540
Ai-Media Technologies, LLC	Closed-Captioning Services	\$ 450	\$ 450
Alcohol & Drug Testing Services, LLC	DOT and FRA-regulated Drug and Alcohol Testing Services	\$ 36,000	\$ 30,364
Allen, Glaessner, Hazelwood LLP	Legal Services for Litigation and Rail Transit Issues	\$ 89,445	\$ 29,170
Alliant Insurance Services	Insurance Brokerage and Risk Management Services	\$ 70,000	\$ 22,207
American Rail Engineers Corporation	Railroad Bridge Inspections, Bridge Engineering, and Related Services	\$ 158,683	\$ 58,854
Argonaut Constructors	Parking Lot Improvements at Petaluma Downtown Station	\$ 14,925	\$ 14,925
Asbury Environmental Services (AES)	Hazardous and Non-Hazardous Waste Removal and Disposal Services	\$ 625	\$ 625
Balfour Beatty Infrastructure, Inc.	Track Surfacing, Lining, and Ballast Restoration	\$ 189,408	\$ 179,937
Balloon Specialties	Balloons for SMART Groundbreaking Events	\$ 2,319	\$ 2,319
BBM Railway Equipment, LLC	Inspect, Certify, and Repair Jacks and Stands	\$ 12,835	\$ 12,385
Becoming Independent	Emergency Bus Bridge Services	\$ 19,051	\$ 11,800
BKF Engineers Inc.	Design and Engineering Services for MUP Segments in Sonoma and Marin Counties	\$ 952,426	\$ 495,820
Bolt Staffing Service, Inc.	Temporary Staffing Services	\$ 30,000	\$ 1,476
Bright Star Security, Inc.	Security Patrol at SMART's Cal Park Tunnel	\$ 11,208	\$ 10,255
Business Training Library, LLC	Cloud-Based Learning Courses	\$ 5,431	\$ 5,431
Cal Interpreting & Translations	Real Time Translation and Related Services	\$ 5,000	\$ -
Charlie Gesell Photography	Photography for Petaluma North Groundbreaking	\$ 625	\$ 625
Cinquini & Passarino, Inc.	Right-of-Way Land Surveying and Related Services	\$ 6,480	\$ 6,480
Code 3 Entertainment Services, LLC	Microtransit Operations and Maintenance Services	\$ 375,000	\$ 311,134
CSW/Stuber-Stroeh Engineering Group	Design and Engineering Services for 5 MUP Segments in Marin County	\$ 979,435	\$ 348,834
CSW/Stuber-Stroeh Engineering Group	Design and Engineering for Petaluma North Station, N. McDowell Grade Crossing, Segments 2 & 3 Pathway	\$ 510,205	\$ 211,739
Data Ticket	Processing Parking Fines for Illegal Parking	\$ 2,500	\$ 600
DeAngelo Contracting Services, LLC	Vegetation Control Services	\$ 38,520	\$ 32,742
Doc Bailey Construction Equipment, Inc.	Hi Rail Vehicle Inspection, Maintenance, Repair, and Certification Services	\$ 9,600	\$ 4,800
Doug Williams	Fire and Life Safety Consultant	\$ 2,035	\$ 555
Downtown Action Organization Inc	MOU for Marketing Partnership	\$ 14,000	\$ 14,000
Dr. Lance O'Connor	Occupational Health Screening Services	\$ 5,000	\$ 1,875
Dunnigan Psychological & Threat Assessments, LLC	Employment-Related Psychological Evaluation Services	\$ 25,000	\$ 14,500
Eide Bailly LLP	Financial Audit Services	\$ 58,300	\$ 46,000
eLock Technologies, LLC	Station Bike Lockers - Ongoing Maintenance and Support Services	\$ 13,130	\$ 11,370
Empire Cleaners	Operations Uniform Dry Cleaning, Laundering, and Related Services	\$ 18,000	\$ 5,687
Fairbank, Maslin, Maullin, Metz & Associates	Survey and Polling Services	\$ 38,500	\$ 38,500
Foster & Foster (formerly Demsey, Filliger, & Associates, LLC)	GASB Pension Compliance Services (Actuarial Calculations)	\$ 4,750	\$ 4,250
Gallagher Benefit Services, Inc.	Classification and Compensation Study Services	\$ 49,875	\$ 49,875
Gary D. Nelson Associates, Inc.	Temporary Staffing and Placement Services	\$ 70,000	\$ 63,679
George Hills Company, Inc.	Third Party Claims Administration Services	\$ 40,000	\$ 8,064
Ghilotti Bros, Inc.	Construction of Non-Motorized Pathway - Lakeville to Payran	\$ 191,144	\$ 167,192
Ghilotti Bros, Inc.	Construction of NMP McInnis to Smith Ranch	\$ 3,490,399	\$ 1,443,765
Golden Five, LLC	Microsoft 365 Consulting Services	\$ 49,800	\$ 48,044
GP Crane & Hoist Services	Cal/OSHA Inspection Services	\$ 3,960	\$ 3,520
Granicus, Inc.	Media Streaming and Internet Broadcasting Services	\$ 12,860	\$ 12,860
Hanford A.R.C.	Implementation and Monitoring, San Rafael Creek Riparian Enhancement Project	\$ 33,558	\$ 33,132
Hanford A.R.C.	Maintenance and Monitoring the Las Gallinas Creek Watershed Riparian Enhancement Planting	\$ 16,188	\$ 13,802
Hanson Bridgett LLP	Legal Services - Union Negotiations	\$ 100,000	\$ 20,941
HCI Systems, Inc.	Fire Equipment Inspection and Certification	\$ 2,406	\$ 1,266
Holland Company	Track Geometry and Measurement Services	\$ 24,375	\$ 24,375
Hunt and Sons, Inc.	Bulk Delivery of Motor Oil (15W40)	\$ 24,000	\$ 16,512
Integrated Security Controls, Inc.	CCTV Maintenance and Support	\$ 28,261	\$ 3,725
Intelligent Technology Solutions, LLC	Maximo SaaS Development, Implementation, and Related Services	\$ 169,683	\$ 169,683
JC & BB3 Enterprises, Inc.	Installation of Window Decals on DMUs	\$ 1,298	\$ 1,068
JMA Civil, Inc.	On-Call Civil & Rail Engineering Design Services	\$ 74,994	\$ 63,198
Khoury Consulting, LLC	California State Legislative and Advocacy Services	\$ 120,000	\$ 110,000
LC Disability Consulting	Disability Access Consulting	\$ 10,000	\$ 3,000
LeaseQuery, LLC	Lease Software Licensing and Software Support Services	\$ 10,596	\$ 10,596

Contractor	Scope	Fiscal Year 23/24 Projected	Fiscal Year 23/24 Actuals
Leete Generators	Generator Inspection and Maintenance Services	\$ 5,494	\$ 5,266
Lewis, Brisbois, Bisgaard & Smith LLP	Various legal services related to transit	\$ 46,576	\$ 4,754
Lisa Wolper, LCSW, SAP	Substance Abuse Professional Services	\$ 2,100	\$ 1,300
Masabi LLC	SMART Mobile Ticketing Pilot Project	\$ 58,500	\$ 48,500
MaxAccel	Compliance Management Software Design/Implementation/Asset Management	\$ 29,295	\$ 28,752
MaxAccel	Learning Management System	\$ 15,700	\$ 11,700
Militus, Inc.	Cybersecurity and Network Threat Analysis and Assessment	\$ 40,000	\$ 40,000
Mission Linen Supply	Employee Uniform Rentals	\$ 34,000	\$ 31,877
Mission Linen Supply	Laundry and Dry Cleaning for SMART-Owned Uniforms	\$ 10,000	\$ 875
Modern Railway Systems, Inc.	Monitoring and Maintenance SMART's Communications Network and TDX System	\$ 94,000	\$ 85,695
Modern Railway Systems, Inc.	Design and Construction of Systems Improvements for the Windsor Extension Project	\$ 6,969,618	\$ 2,191,249
MuniServices, LLC	Sales Tax Recovery Services	\$ 38,444	\$ 23,711
Netspeed Solutions, Inc.	SMART Phone System Maintenance	\$ 11,867	\$ 11,867
North Bay Bottling (Alex Ruiz Sr.)	Drinking Water Delivery Service	\$ 2,900	\$ 711
North Bay Petroleum	Provision of Fuel for DMUs	\$ 1,535,237	\$ 1,404,002
Nossaman LLP	Litigation, Rail Transit Issues, and other related legal services	\$ 287,933	\$ 276,706
Occupational Health Centers of CA	Pre-Employment Evaluation Services	\$ 42,000	\$ 11,253
Olson Remcho	Legal Services Related to Ordinances and Taxes	\$ 5,000	\$ 3,867
Oracle	Fusion ERP System	\$ 200,000	\$ 188,238
Parodi Investigative Solutions	Pre-Employment Background Investigation Services	\$ 25,000	\$ 14,300
PFM Financial Advisors, LLC	Financial Advisory Services	\$ 20,000	\$ -
Portola Systems, Inc.	SMART Station Network Maintenance and Configuration Services	\$ 324,068	\$ 278,742
Precision Wireless	Tech Support and Maintenance for Land Mobile Radio	\$ 31,500	\$ 8,685
Sherwood Electromotion, Inc.	Overhaul Services for SMART's Permanent Magnet Alternators	\$ 29,500	\$ 27,600
Sierra-Cedar, LLC	Oracle Enterprise Resources Planning Software	\$ 70,000	\$ 44,826
Sierra-Cedar, LLC	Implementation of Projects and Grants Modules	\$ 160,000	\$ 116,405
Sonoma County Fleet Operation Division	Non-Revenue Fleet Vehicle Installation, Maintenance, and Repair Services	\$ 56,000	\$ 51,088
Sperry Rail Services	Rail Flaw Detection Services	\$ 28,000	\$ 8,051
SPTJ Consulting, Inc.	Network Monitoring and Support Services	\$ 263,190	\$ 211,562
Stacy and Witbeck, Inc.	Design/Build Construction of Civil, Track & Structures of Windsor Extension	\$ 19,556,503	\$ 14,819,930
Stacy and Witbeck/Ghilotti Bros, A Joint Venture	Construction of Petaluma North Station Platform, Grade Crossing Reconstruction, and Pathway	\$ 9,212,411	\$ 7,486,500
Stacy and Witbeck/Ghilotti Bros, A Joint Venture	Paving Work for the City of Petaluma as Part of the Petaluma North Project	\$ 806,102	\$ 159,885
Survival CPR & First Aid, LLC	First Aid and CPR Training, AED Compliance Program Management	\$ 11,300	\$ 8,013
Swiftly, Inc.	AVL Mobile Application and Website Interface	\$ 9,702	\$ 9,702
TDG Engineering, Inc.	Wayfinding System Planning and Design for the SMART Pathway	\$ 112,454	\$ 112,168
The Routing Company	Furnish, Implement, and Maintain a Microtransit Software Platform	\$ 45,662	\$ 11,869
The Routing Company	Social Media Campaign for SMART Connect	\$ 6,200	\$ -
Thomas Houston Associates, Inc.	Equal Opportunity Employment Consultant	\$ 10,000	\$ 5,950
Traliant, LLC	Online Training Program	\$ 2,706	\$ 2,706
Triangle Properties, Inc.	SoCo Pathway Riparian Enhancement Implementation and Monitoring	\$ 52,951	\$ 50,151
Trillium Solutions, Inc.	Transit Feed Mapping Software	\$ 1,890	\$ 1,890
True Value Wholesale Hardware of Larkfield, Inc.	Tent Rental for Petaluma North Groundbreaking	\$ 6,190	\$ 6,190
Urban Transportation Associates, Inc.	Onboard Automatic Passenger Counter System Purchase, Install, and Software Implementation and Training	\$ 9,200	\$ 9,200
UTCRA, LLC	Wheel Pressing Services	\$ 43,500	\$ 43,500
Van Scoyoc Associates	Federal Lobbying Services	\$ 90,000	\$ 45,000
VenTek Transit Inc.	Fare Vending Machine Operations and Maintenance Services	\$ 190,649	\$ 171,504
Vista Broadband Networks, Inc.	Broadband Services	\$ 9,000	\$ 8,261
W.J.C. Electric, Inc. dba Hahn Automotive	Non-Revenue Vehicle Repair and Service	\$ 15,000	\$ -
Web Master Designs, LLC	As-Needed Monitoring, Management, and Support Services for Public-Facing Websites	\$ 10,000	\$ 3,375
West Coast Arborists, Inc.	Tree Trimming and Tree Removal Services	\$ 35,165	\$ 27,160
WRA, Inc.	As-Needed Environmental Consulting Services	\$ 168,185	\$ 148,279
	TOTAL	\$ 49,176,975	\$ 32,561,361

FREIGHT RAIL

Contractor	Scope	Fiscal Year 23/24 Projected	Fiscal Year 23/24 Actuals
American Rail Engineers Corporation	Railroad Bridge Inspections, Bridge Engineering, and Related Services	\$ 44,439	\$ 32,607
American Rail Engineers Corporation	Brazos Phase 2 Bridge Design	\$ 20,000	\$ 14,278
Cathcart Rail Holdco, LLC dba Cathcart Field Services, LLC	Running Repair Agent Inspection and Maintenance Services	\$ 7,884	\$ 7,870
DeAngelo Contracting Services, LLC	Vegetation Control Services	\$ 27,840	\$ 23,664
Freight Rail Tracking Software	Freight Rail Tracking Software	\$ 5,000	\$ 3,456
GATX Rail Locomotive Group, LLC	Freight Locomotive Lease Agreement	\$ 44,800	\$ 39,894
HCI Systems, Inc.	Fire Equipment Inspection and Certification	\$ 354	\$ -

Contractor	Scope	Fiscal Year 23/24 Projected	Fiscal Year 23/24 Actuals
Hue & Cry, Inc.	Security System at Schellville Depot	\$ 1,000	\$ 746
Koppers Railroad Structures, Inc.	Brazos Branch Timber Bridge Repairs - Phase I Contract	\$ 660,696	\$ 660,696
Lambertus J. Versteegen dba South West Locomotive Repair	Locomotive Maintenance and Repair	\$ 20,000	\$ 13,271
Mike Neles Trucking LLC	Class A Driving	\$ 300	\$ 300
North Bay Petroleum	Provision of Fuel for Freight Locomotives	\$ 90,000	\$ 60,055
Summit Signal, Inc.	Inspection, Testing, and Maintenance Services for Signal Equipment Along Brazos Branch	\$ 75,792	\$ 62,278
Summit Signal, Inc.	Freight Call-Out Maintenance and Repair Services	\$ 10,530	\$ 9,975
Wine Country Sanitary, Inc.	Portable Toilet Rental and Maintenance	\$ 2,400	\$ 2,165
	TOTAL	\$ 1,011,035	\$ 931,256

Actuals-To-Date include invoices that have been approved, but may not have been processed in SMART's Financial System, as of May 31, 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
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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Suite 200
Petaluma, CA 94954
Phone: 707-794-3330
Fax:at 707-794-3037
www.SonomaMarinTrain.org

July 17, 2024

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

SUBJECT: Nossaman LLP Contract Amendment No. 4

Dear Board Members:

RECOMMENDATION:

Authorize the General Manager to Execute Contract Amendment No. 4 to Contract No. LG-PS-21-001 with Nossaman LLP, in an amount of \$200,000 and extend the term of the contract to June 30, 2025.

SUMMARY:

Nossaman LLP has assisted SMART with specialized legal services in a variety of rail transit and state and local government agency matters, and since 2021, Nossaman LLP has assisted SMART on an as needed basis to provide litigation support, and advice on regulatory, railroad right-of way, and construction issues, as well as eminent domain and related proceedings. Staff anticipates the continued need for the firm's specialized expertise and litigation support.

Staff recommends that the District continue to retain the services of Nossaman LLP for supplemental specialized legal support on an as-needed basis. Contract Amendment No. 4 provides for term extension through June 30, 2025, and increases the not-to-exceed amount by \$200,000.

FISCAL IMPACT: Funds are included in the Fiscal Year 2024/2025 Board Adopted Budget.

REVIEWED BY: Finance /s/ Counsel

Very truly yours,

 /s/
Thomas F. Lyons,
General Counsel

Attachment(s): Nossaman LLP Contract Amendment No. 4

**FOURTH AMENDMENT TO THE LEGAL SERVICES AGREEMENT BETWEEN THE
SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
AND NOSSAMAN LLP**

This Fourth Amendment dated as of July 17, 2024 (the “Fourth Amendment”), to the Legal Services Agreement by and between Nossaman LLP (hereinafter referred to as “ATTORNEYS”) and the Sonoma-Marín Area Rail Transit District (hereinafter referred to as “SMART”), dated as of April 30, 2021 (the “Original Agreement,” as amended and supplemented by the First, Second, Third, and now this Fourth Amendment, the “Agreement”).

RECITALS

WHEREAS, Attorneys and SMART previously entered the Original Agreement on April 30, 2021 to provide various legal services regarding litigation, rail transit issues, including railroad right of way, construction projects, eminent domain proceedings and related issues; and

WHEREAS, SMART and Attorneys previously entered into various Amendments to the Agreement on September 1, 2021, and on June 1, 2022, and on July 20, 2023 to increase the not-to-exceed amount of the Agreement and extend the term of the Agreement; and

WHEREAS, SMART desires to amend the Agreement to extend the term to June 30, 2025 and increase the not-to-exceed amount by \$200,000, for a total not-to-exceed amount of \$1,125,000, modify the Exhibit A, Schedule of Rates, and

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

AGREEMENT

1. **“ARTICLE 4. COMPENSATION”** The last sentence of Article 4 of the Agreement is hereby amended as follows:

“Total compensation under this Agreement shall not exceed \$1,125,000.”
2. **“ARTICLE 7. EFFECTIVE DATE AND TERM”** is hereby deleted and replaced with the following:

This Agreement shall be effective as of April 30, 2021, and shall expire on June 30, 2025, unless terminated earlier in accordance with the terms herein.
3. **“EXHIBIT A, SCHEDULE OF RATES”** Exhibit A, Schedule of Rates, is hereby deleted in its entirety and replaced with the revised Exhibit A, Schedule of Rates, attached herein.

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.

SIGNATURE PAGE TO FOLLOW

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

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

Dated: _____

By _____
Eddy Cumins, General Manager

NOSSAMAN LLP

Dated: _____

By _____
Brad Kuhn, Partner

APPROVED AS TO FORM:

Dated: _____

By _____
District Counsel

**Exhibit A
Schedule of Rates**

Matter Code 008

Employee Code	Employee	Hourly Rate
ACJ1	Johnston, Amanda	\$265.00
BBK	Kuhn, Bradford B.	\$585.00
DMN	Nowlin McMillin, Diana M.	\$265.00
JF1	Friess Leivas, Jillian	\$585.00
RMC	Cole, Ron	\$585.00
SMS3	Silva, Steven M.	\$585.00
FC2	Castaneda, Fernando	\$265.00
JHV	Vorhis, James H.	\$585.00

The Hourly Rate for attorneys shall be \$585.00 and for paralegals shall be \$265.00.

Matter Code 009

Employee Code	Employee	Hourly Rate
BBK	Kuhn, Bradford B.	\$725.00
RMC	Cole, Ron	\$495.00
BZR	Rubin, Benjamin Z.	\$585.00
JHV	Vorhis, James H.	\$335.00
FC2	Castaneda, Fernando	\$335.00
JF1	Friess Leivas, Jillian	\$385.00
SMS3	Silva, Steven M.	\$495.00
DMN	Nowlin McMillin, Diana M.	\$310.00
CLB	Blumenstein, Carl L.	\$725.00

Matter Code 010

Employee Code	Employee	Hourly Rate
DMN	Nowlin McMillin, Diana M.	\$265.00
JF1	Friess Leivas, Jillian	\$585.00
BBK	Kuhn, Bradford B.	\$585.00
BZR	Rubin, Benjamin Z.	\$585.00
RMC	Cole, Ron	\$585.00
JHV	Vorhis, James H.	\$585.00
FC2	Castaneda, Fernando	\$265.00
SMS3	Silva, Steven M.	\$585.00
CLB	Blumenstein, Carl L.	\$585.00

The Hourly Rate for attorneys shall be \$585.00 and for paralegals shall be \$265.00.

The rates specified herein are fully burdened and include all administrative and overhead costs such as secretarial assistance, word processing and computer assisted research cost and telephone charges.

EXPENSES

Attorneys shall not charge for travel time, but shall, if approved by SMART, be reimbursed for travel expenses such as airfare (excluding first class or business class), taxis, rental cars, etc. in accordance with SMART's travel policy.

Copying charges:	\$0.15 per page
Fax charges: (outgoing only)	\$1.00 per page
E-Discovery software hosting:	\$588.80 per month

Litigation expenses, including Title consultants and experts may be approved in writing by the General Counsel. These expenses will be billed to SMART at cost with receipt documentation submitted with the invoice.



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July 17, 2024

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

SUBJECT: Revise and Adopt Policy HRM-0007, Drug and Alcohol-Free Workplace Policy

Dear Board Members:

RECOMMENDATION:
Adopt Resolution No. 2024-22 revising policy HRM-0007, Drug and Alcohol-Free Workplace, effective July 17, 2024.

SUMMARY:
On May 16, 2012, the Board adopted Resolution No. 2012-12, authorizing the General Manager to approve amendments to the personnel policies and procedures relative to changes in Federal, State and Local laws, Ordinances, and regulations and to update provisions from time to time when deemed necessary and prudent.

On March 18, 2015, the Board adopted Resolution No. 2015-04, authorizing amendment of SMART's Personnel Policies and Procedures, including HRM-0007 Drug and Alcohol-Free Workplace Policy.

On July 20, 2016, the Board received a report regarding updates to HRM-0007, SMART Drug and Alcohol-Free Workplace policy that included the establishment of random drug testing program under agency authority for Operations employees not subject to random drug testing under Code of Federal Regulations 49, Part 219; Control of Alcohol and Drug Use.

On February 3, 2021, the Board received a report regarding updates to HRM-0007, SMART Drug and Alcohol-Free Workplace policy, that included the establishment of the Ensured Drug Testing program under agency authority.

On September 20, 2023, the Board adopted Resolution No. 2023-31 authorizing the revision of HRM-0007, SMART Drug and Alcohol-Free Workplace policy, including changing alcohol testing rates from 10% to 25% to match rates per best practice.

Currently, in addition to formatting changes, the General Manager has approved updates to HRM-0007 Drug and Alcohol-Free Workplace Policy in the following areas:

1. Section H, Substances Tested, has been revised to reflect changes required by Senate Bill 2188 (Discrimination in employment; Use of cannabis). The policy has been revised to state that the District will test only for psycho-active THC cannabis metabolites under Company Authority testing. All other substances tested for remain the same. As a result of this revision SMART is adding oral fluid testing as a means of specimen collection.

Attached for your review, is our proposed SMART Drug and Alcohol-Free Workplace Policy. Please note that Appendix A, SMART's CFR 49 Part 219, Railroad Compliance Plan for Control of Drug and Alcohol Use has been submitted to the Federal Railroad Administration (FRA) and has been approved. With your approval of this policy, we will revise the personnel policies and procedures to include this addition.

Please note that positions regulated by the Department of Transportation and the Federal Railroad Administration are still subject to federal restrictions on cannabis which does not allow for use on or off duty.

FISCAL IMPACT: The approval of the proposed changes to the Drug and Alcohol-Free Workplace policy will have no fiscal impact as they are included in the previously approved Fiscal Year 2024-2025 budget.

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

Very truly yours,

 /s/
Lisa Hansley
Human Resources Manager

Attachments:

- 1) Resolution No. 2024-22
- 2) Revised Policy HRM-0007 Drug and Alcohol-Free Workplace

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT,
STATE OF CALIFORNIA, REVISING HRM-0007, DRUG AND ALCOHOL-FREE WORKPLACE POLICY**

WHEREAS, the Board of Directors has been granted statutory power to adopt rules and regulations for the administration of employer and employee-relations; and

WHEREAS, on May 16, 2012, the Board adopted Resolution No. 2012-12 authorizing the General Manager to approve amendments to the Personnel Policies and Procedures; and

WHEREAS, Resolution No. 2012-12 states that SMART staff will provide the Board with status reports on any such amendments; and

WHEREAS, On March 18, 2015, the Board approved Resolution Number 2015-04 adopting the District’s personnel policies and procedures manual; and

WHEREAS, On July 20, 2016, the Board received a report on and approved an update to the District’s Drug and Alcohol-Free Workplace Policy; and

WHEREAS, On September 20, 2023, the Board approved Resolution Number 2023-31 revising the District’s Drug and Alcohol-Free Workplace Policy; and

WHEREAS, Resolution No. 2024-22 considers the revision of the SMART Drug and Alcohol-Free Workplace Policy; and

NOW, THEREFORE, BE IT RESOLVED: that the Drug and Alcohol-Free Workplace Policy for the Sonoma-Marín Area Rail Transit District attached as Exhibit A to Resolution No. 2024-22 is hereby revised; and

BE IT FURTHER RESOLVED that all previously adopted versions of HRM-0007, Drug and Alcohol-Free Workplace Policy are hereby repealed and replaced by Exhibit A, and that this resolution shall be and is hereby declared to be in full force and effect from the date of its passage.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 17th day of July 2024, by the following vote:

DIRECTORS:
AYES:
NOES:
ABSENT:
ABSTAIN:

Eric Lucan, Chair, Board of Directors
Sonoma-Marín Area Rail Transit District

ATTEST: _____
Leticia Rosas, Clerk of the Board of Directors
Sonoma-Marín Area Rail Transit District

Sonoma-Marin Area Rail Transit

Section 2: Personnel Conduct and Standards of Employment

HRM - 0007 DRUG AND ALCOHOL-FREE WORKPLACE

I. PURPOSE

- A. The District is committed to protecting the safety, health and well-being of all employees, the public, and other individuals in our workplace. We recognize that alcohol abuse and drug use pose a significant threat to our goals. We have established a drug and alcohol-free workplace program to maintain a drug and alcohol-free environment. This organization encourages employees to voluntarily seek help with drug and alcohol problems.

II. RESPONSIBILITIES

- A. Covered Individuals: Any individual who conducts business for the organization, is applying for a position, is conducting business on the organization's property, or is conducting business from an off-site location (such as working remotely from home or attending a work-sponsored event) is covered by this policy. Therefore, this policy applies during all working hours regardless of the work location, paid standby, while on organization property, and at District-sponsored events. Our policy includes, but is not limited to the General Manager, senior management, managers, supervisors, full-time employees, part-time employees, interns, off-site employees, and contractors doing business on SMART's property. Notwithstanding the above, the testing provisions of this policy only apply to District employees.

III. POLICY

A. APPLICABILITY

1. All employees must abide by the terms of this policy as a condition of employment. Provisions set forth in this policy are included under the sole authority of Sonoma-Marin Area Rail Transit (District) and are in addition to the authority of the Department of Transportation (DOT) and the Federal Railroad Administration (FRA). Certain positions designated as performing Regulated Service pursuant to FRA regulations will also be subject to FRA and/or DOT regulations regarding the use of drugs and alcohol. Details of these regulations and related requirements can be found in SMART's 49 CFR Part 219, Railroad Compliance Plan for Control of Drug and Alcohol Use (HRM-0007-A). Should there be a conflict between the District's policies and FRA/DOT requirements, for Regulated Service positions, the FRA/DOT requirements will control. Notwithstanding the above, employees in Regulated Service positions may also be subject to drug and alcohol testing pursuant to this policy under circumstances that are not covered or regulated by the FRA/DOT.

B. PROHIBITED BEHAVIOR

1. The use of alcohol, illegal drugs, legal drugs including abuse of prescription medication (see Section E.1 of this policy), intoxicants, and controlled substances (referred to in this policy as alcohol and/ or drugs) can impair an individual's ability to work safely and efficiently. The District prohibits the use of these substances during working hours or while on District business. The District will not jeopardize the safety of the employee, other employees, our clients, the public, and District operations due to an individual's use of alcohol and/or drugs or inappropriate drug use. To ensure safe and productive work practices and to comply with the Federal Drug Free Workplace Act of 1988, the District prohibits the following behavior:
 - i. Reporting to work while their ability to perform their job duties is impaired by on or off duty use of alcohol or drugs. When an individual is called to report to unscheduled work, he/she/they should advise the supervisor if he/she/they are impaired under this policy and unable to work.
 - ii. Use of alcohol, illegal or legal drugs, and/or prescription drugs without a prescription or in violation of Section E.1 (Prescription Drugs and Over-the-Counter Drugs below), on duty regardless of the work location, on property, on paid standby, or at any time while on District business.
 - iii. The unlawful distribution, possession, direct or third-party sale, manufacture, purchase, dispensing, provision, or use of a controlled substance - or the attempted act of any of the above - to any person, including any employee, while either or both employees are on duty, of alcohol and/or drugs during scheduled work hours, while on District business or while on premises owned or occupied by the District. Possession of an open container of alcohol while on duty or on SMART's property is prohibited.
 - iv. Operating a vehicle owned, rented, or leased by the District while under the influence of, or impaired by, alcohol and/or drugs.
2. Employees who violate any of the above prohibitions or are convicted on criminal drug statute or DUI violations occurring in or outside of the workplace, or who fail to give the notice required below shall be subject to the appropriate personnel action, up to and including termination, and/or may, where appropriate, be required to participate in a substance abuse assistance or rehabilitation program approved by a federal, state, or local agency.

C. NOTIFICATION OF CONVICTIONS

1. Any employee who is convicted of a criminal drug violation or Driving Under the Influence (DUI) violation in or outside of the workplace must notify their immediate supervisor in addition to the HR Manager in writing within five calendar days of the conviction. The District will take appropriate action within 30 days of notification. Federal agencies will be notified when appropriate.

D. SEARCHES

1. Entering the District's property constitutes consent to searches and inspections. If an individual is suspected of violating the Drug and Alcohol-Free Workplace Policy, he/she/they may be asked to submit to a search or inspection at any time. The District reserves the right to search, without employee consent, all areas and properties over which the District maintains control or joint control with the employee. Searches can be conducted of lockers, desks, workstations, vehicles, and equipment. There should be no expectation of privacy while on District property.

E. PRESCRIPTION DRUGS AND OVER-THE-COUNTER DRUGS

1. The use of prescription drugs and/or over-the-counter drugs may seriously impair an employee's job performance. An employee who is using prescription drugs and/or over-the-counter drugs which may impair their ability to safely perform the job or may affect the safety or well-being of others must submit a physician's statement to Human Resources that the prescription and/or over-the-counter drug use will not affect job safety. Employees must contact the HR department for the Physician's Statement form. Abuse of prescription drugs while on duty or when reporting for duty is strictly prohibited including, but not limited to, exceeding the prescribed dosage, using a prescription medication for a purpose not intended or using a prescription medication that was prescribed to another individual. The District prohibits employees while on-duty to be under the influence of mood-altering over-the-counter drugs used contrary to the product's labeling. The employee is not required to identify the medication or the underlying illness. Various federal, state, and local laws protect the rights of individuals with disabilities and others regarding the confidentiality of medical information, medical treatment, and the use of prescription drugs and substances taken under medical supervision. This policy complies with these laws. Nothing contained in this policy is intended to interfere with individual rights under these laws, or to violate these laws, however it should be noted that certain employees of the District are subject to Federal regulations, (49 CFR Part 219), which prohibits the use of marijuana, or any product containing tetrahydrocannabinol (THC) and does not recognize it as a prescription medication.

F. DRUG AND ALCOHOL TESTING

1. The District may require drug and/or alcohol testing for the following reasons:
 - i. Post-Offer, Pre-Employment Testing
 - ii. Reasonable Suspicion Testing
 - iii. Random Testing
 - iv. Company Authority Post-Incident Testing
 - v. Ensured Testing
 - vi. Return-to-Service
 - vii. Follow-Up Testing
 - viii. When required by state or federal law or regulation

G. CONFIDENTIALITY

1. All information received by the District through the drug-and alcohol-free workplace program is confidential communication. Access to this information is limited to those who have a legitimate need to know in compliance with relevant laws. All drug-testing information will be maintained in separate confidential files.

H. SUBSTANCES TESTED

1. The substances that may be tested for are psycho-active THC cannabis metabolites, Cocaine, Opioids, Phencyclidine (PCP), Amphetamines, Alcohol, and any other controlled substance designated by the Department of Transportation. Under District policy, testing for the presence of alcohol will be conducted by analysis of breath. Testing for the presence of the metabolites of drugs will be conducted by the analysis of urine or oral fluid. Employees should take note that many products claiming to be Cannabidiol (CBD) could contain higher levels of THC than what the product level states. CBD is not a legitimate medical explanation for a laboratory confirmed marijuana positive result. Since the use of CBD products could lead to a positive drug test result, all employees should exercise caution when considering whether to use CBD products and be aware of the possible consequences.

I. ASSISTANCE

1. The District recognizes that alcohol and drug abuse and addiction are treatable illnesses. We also realize that early intervention and support improve the success of rehabilitation. To support our employees, our Drug and Alcohol-Free Workplace Policy:
 - i. Encourages employees to seek help if they are concerned that they may have a drug and/or alcohol problem.
 - ii. Encourages employees to utilize the services of qualified professionals in the community to assess the seriousness of suspected drug or alcohol problems and identify appropriate sources of help. NOTE: Regulated, covered service employees must follow 49 CFR Part 219 Subpart K 219.1005 (c) when invoking a referral process.
 - iii. Offers all employees and their covered family members assistance with alcohol and drug problems through the Employee Assistance Program (EAP).
 - a. The District has established an Employee Assistance Program (EAP) to assist those employees who voluntarily seek help for substance abuse issues. Employees may contact the EAP directly or the Human Resources Department for further information. Such contact and referral shall be strictly confidential. Contact information for the District's current EAP provider can be found on the employee benefits webpage.

- iv. Allows the use of accrued paid leave while seeking treatment for alcohol and other drug problems.
2. Employee Responsibility: Treatment for alcoholism and/or other drug use disorders may be covered by the employee benefit plan. However, the ultimate financial responsibility for recommended treatment belongs to the employee.
3. SMART reserves the right to evaluate and discuss with the employee the impact and possible undue hardship on the District of any time off requested and/or granted for the employee to participate in a rehabilitation program.

J. POST-OFFER, PRE-EMPLOYMENT TESTING

1. Applicants, including current employees in non-safety sensitive positions, applying for SMART designated Safety Sensitive positions, are subject to post-offer, pre-employment drug and alcohol testing as part of the regular pre-employment process.
2. Applicants for Regulated Service positions and current employees of the District applying internally for positions that require DOT and FRA pre-employment testing will be subject to the required testing prior to assuming any Regulated Service duties.
3. If a positive test result for drugs and/or alcohol is returned the applicant will have failed the post-offer, pre-employment drug test and the offer of employment will be withdrawn.

K. REASONABLE SUSPICION TESTING

1. Managers and Supervisors are responsible for enforcement of this policy in coordination with SMART's Designated Employer Representative (DER) or Assistant Designated Employer Representative (A/DER). Managers are required to contact the DER or A/DER to confirm and coordinate testing or to confer on this policy.
2. The District may require drug and/or alcohol testing when a reasonable suspicion exists that any employee is under the influence of drugs and/or alcohol while on duty or District property.
3. Reasonable suspicion means suspicion based on specific, articulable, contemporaneous facts regarding, among other things, the appearance, behavior, speech, attitude, mood, and/or odor of an employee.
4. Reasonable suspicion must be based on short term indicators such as, but not limited to: glassy or red eyes; slurred speech; distinctive odors, such as alcohol or marijuana on the breath or person; poor physical condition, such as staggering or lack of coordination; slowed reaction time; drowsiness; dilated or constricted pupils; irritability; hyper excitability; restlessness; rapid respirations; confusion; panic; talkativeness; profuse sweating; extreme mood swings; diminished concentration; loud arguing or fighting; inattentiveness or the observation of possession of alcohol or drugs.

5. Only one trained supervisor is needed to determine reasonable suspicion for alcohol. With respect to suspicion of drug use, the required observation must be made by two trained supervisors at least one of whom is onsite. A second trained supervisor may be called by the suspecting supervisor to discuss the drug use indicators.
6. Any manager or supervisor directing an employee to submit to a drug and/or alcohol test will document in writing the facts constituting reasonable suspicion that the employee in question is intoxicated or under the influence of drugs.
7. To ensure that supervisors are trained to make reasonable suspicion determinations, supervisors vested with the authority to demand a reasonable suspicion drug and/or alcohol test will attend training on alcohol use/misuse and training on controlled substance use/misuse. The training will cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.
8. District policy requires that all employees who have submitted to a Reasonable Suspicion drug and/or alcohol test, be relieved of duty until the results are known. Non-Regulated employees and DOT-Regulated employees tested under Company Authority policy will be tested utilizing a drug screen and/or an alcohol breath test.
9. The employee will be relieved of duty and placed on leave until the test results are returned. The employee will be given the opportunity to discuss any possible confidential issues that may have led the Supervisor or Manager to suspect a violation of the Drug and Alcohol-Free Workplace policy.
10. Information about the Employee Assistance Plan (EAP) will be provided. This resource provides assistance to employees and family members on a variety of concerns.

L. RANDOM TESTING

1. The District will randomly test personnel in SMART Designated Safety Sensitive positions.
2. The District's random testing program under this Policy will ensure that each employee covered by the program will have an equal chance of being selected at every random selection. Under Company Authority, the District elects to test at an annual rate of 25% for alcohol and 25% for drugs.
3. Random Testing Pools
 - i. The District will identify and maintain an up-to-date list of all employees covered by this District Random Testing policy and ensure they are all in the Company Authority Random Testing pool.

4. Random Selection and Testing Procedures

- i. The District's third-party administrator will use a computer software system to generate random Company Authority pull lists. The lists will be generated using employee ID numbers on a quarterly basis.
- ii. Once the selection is made, the Designated/Assistant Designated Employer Representative (DER, A/DER) will arrange notification. No prior notification will be given. A selected person will only be tested during their work shift, extended only long enough to complete the testing.
- iii. The covered employee, once notified, must proceed to the selected testing site immediately.
- iv. The collection date and time will be varied over each testing period (quarterly) by the DER, A/DER to ensure that it cannot be anticipated.

M. COMPANY AUTHORITY POST-INCIDENT TESTING

1. FRA regulations require drug and alcohol testing following certain accidents and incidents specified by 49 CFR Part 219.201. Employees involved in accidents or incidents not addressed by FRA Regulations, may be required to take a District drug and/or alcohol test. Determinations to test will be based on the best information available at the time of the incident. Those circumstances that may require testing under this Policy include:
 - i. A fatality not wholly attributable to natural causes, vandalism, trespassers, vehicles ignoring warning lights, signals, or train crossing arms;
 - ii. An individual is injured and requires professional medical treatment beyond first aid or immediately receives medical treatment away from the scene of the accident;
 - iii. Collisions involving District non-revenue vehicles that require towing away from the scene including non-revenue vehicles taken out of service;
 - iv. Estimated property damage equal to or exceeding \$25,000.00 including District and non-District property.

2. District Managers will document the facts that led to the decision on whether or not to have Post-Incident drug and/or alcohol tests performed. Documentation of this decision must be placed in the appropriate files. This determination shall be based on the best information available at the time of the accident or incident and based on specific, articulable facts.
3. Following any accident or incident, employees involved in the accident/incident must notify their supervisor as soon as practicable and not leave the site or premises until the Investigating Manager notifies the employee of the determination regarding drug and alcohol testing.

N. ENSURED TESTING

1. DOT/FRA Regulated and SMART Designated Safety Sensitive employees will be subject to the Company Authority Ensured Testing Program. This personnel group will be placed into a pool that will ensure they are subject to an alcohol and drug screening test at least once on a bi-annual basis.
 - i. Similar to the Random Testing pool, the District's contracted third-party administrator, will use a computer software system to generate random Ensured Testing pull lists. The lists will be generated using employee ID numbers on a monthly basis.
 - ii. Once the selection is made, the Designated/Assistant Designated Employer Representative (DER, A/DER) will arrange notification. No prior notification will be given. A selected person will only be tested during their work shift, extended only long enough to complete the testing.
 - iii. The covered employee, once notified, must proceed to the selected testing site immediately.
 - iv. The collection date and time will be varied over each testing period by the DER, A/DER to ensure that it cannot be anticipated.

O. RETURN-TO-SERVICE

1. The District will require an employee who has violated this policy and requests to return to employment with the District to meet with the Drug and Alcohol Counselor and to test negative on a Return-to-Service drug and/or alcohol test before returning to work. Inclusion of this paragraph in no way obligates the District to make an offer of return-to-service as an employee. If granted, this testing will be governed by a Return-to-Work Agreement between the employee and the District.

P. SELF-REFERRAL/ VOLUNTARY REHABILITATION

1. Employees are encouraged to voluntarily seek professional substance abuse assistance before any substance use or dependence affects their job performance, and prior to any violation of this policy, without any fear of discipline. Prior to being selected and informed of any testing as outlined in this policy, an employee should self-identify to their Manager, Supervisor, or the Drug and Alcohol Program Designated/Assistant Designated Employer Representative. Assistance and evaluations are available through the Employee Assistance Program (EAP) or SMART's Drug and Alcohol Counselor for referral to a therapeutic program if applicable.
2. An employee who self-refers and successfully participates in a drug and/or alcohol rehabilitation program will be subject to clearance by a Drug and Alcohol Counselor, a negative Return-to-Service test result, and must comply with any follow-up recommendations or courses of action. In such cases, the employee must sign and abide by the terms set forth in a Return-to-Work Agreement as a condition of continued employment. The inclusion of this paragraph in no way obligates the District to make an offer of return to service as an employee.
3. If the employee is currently the subject of a disciplinary investigation or proceeding, and the employee voluntarily refers for an evaluation, any separate pending or current disciplinary action will continue to move forward as appropriate.
4. SMART reserves the right to evaluate and discuss with the employee the impact and possible undue hardship on the District of any time off requested and/or granted for the employee to participate in a rehabilitation program.

Q. FOLLOW-UP TESTING

1. An employee may be subject to unannounced follow-up drug and/or alcohol testing if a Drug and Alcohol Counselor (DAC), also known as a Substance Abuse Professional (SAP) in a DOT-regulated program, directs, as part of a treatment monitoring plan, such a requirement. The number and frequency of such follow-up testing will be determined by the DAC for all employees under Company Authority policy. Follow-up testing shall not exceed twenty-four (24) months from the date of the employee's initial removal from service. Inclusion of this paragraph in no way obligates the District to make an offer of return-to-service as an employee or conduct follow-up testing.

R. DRUG TESTING PROCEDURES

1. The Collection Agents will meet the federal DOT standards.
2. A laboratory certified by the Department of Health and Human Services/ Substance Abuse and Mental Health Service Administration (DHHS/SAMHSA) under Mandatory Guidelines for Federal Workplace Drug Testing Programs, will perform all drug testing under this policy.

3. For laboratory testing, the name of the individual providing the specimen will remain confidential and will not be provided to the laboratory performing the test. The laboratory is only able to identify the specimen by the specimen ID number printed on the chain-of-custody form.
4. Test results will be reported from the laboratory to the Medical Review Officer (MRO) who will review the drug test results. If the test results are returned indicating a positive result, the MRO will make reasonable efforts to contact the employee directly to discuss the results. If the MRO cannot contact the employee, the MRO shall contact the DER to assist in contacting the employee. If the employee does not contact the MRO within three days, the MRO will report the test as positive. After speaking with the employee, the MRO will determine if there is a legitimate medical explanation that exists for the test results. The results (positive or negative as determined by the MRO) will be reported back to the DER exclusively through the MRO.
5. Inability to provide a sample for the collection agent to perform the test will result in the following actions:
 - i. After failing to provide a sample, the employee will be pulled from service and given a form to sign that explains the process they now must follow.
 - ii. The employee will be directed to contact a licensed medical evaluator within 24 hours to arrange an appointment to be evaluated to determine if a legitimate reason can explain the inability to provide a sample. This appointment must be scheduled and attended within five (5) days from the date of the test.
 - iii. The MRO will make the final determination after receiving documentation from the medical evaluator.
 - iv. If the MRO determines the employee had a legitimate reason not providing a sample to be tested the employee will be reinstated immediately.
 - v. If the MRO determines there is no medical reason, the employee is subject to discipline up to and including suspension or dismissal.

S. ALCOHOL TESTING PROCEDURES

1. Breath alcohol testing will be performed by fully trained and certified Breath Alcohol Technicians (BAT) using the National Highway Traffic Safety Administration (NHTSA) approved testing devices.
2. The results will be documented on an approved Breath Alcohol Testing Form and will be signed by the employee and the BAT.
3. The employee will receive a copy of the test result at the time of the test. An identical copy will be sent to the District's DER.

T. POSITIVE TEST/ REFUSAL TO TEST

1. Any employee who tests positive pursuant to Company Authority testing will be immediately removed from duty, referred to a drug and alcohol counselor (DAC) for assessment and recommendations.
2. A test shall be deemed positive if the amounts present are above the standard level for accurate detection as established by the DOT guidelines.
3. The District policy will follow DOT testing thresholds as established by the U.S. Department of Health and Human Services to determine a positive drug and/or alcohol test.
4. Refusal to test: An employee will be subject to the same consequences of a positive test if the employee refuses the screening or the test, adulterates or dilutes the specimen, substitutes the specimen with that from another person or sends an imposter or refuses to cooperate in the testing process in such a way that prevents completion of the test.

U. CONSEQUENCES

1. One of the goals of the District's drug and alcohol-free workplace program is to encourage employees to self-identify and voluntarily seek help with alcohol and/or drug problems. If, however, an individual violates the policy before self-identifying, the consequences are serious.
2. In the case of applicants, if the applicant violates the drug and alcohol-free workplace policy or tests positive on a pre-employment drug or alcohol screening test, the District will discontinue the recruitment process and any offer of employment will be withdrawn.

3. Employees who violate the District's drug and alcohol policy will be removed from the workplace immediately. If an employee violates the policy, they will be subject to progressive disciplinary action up to and including termination and may be required to enter rehabilitation at the cost of the employee. An employee required to enter rehabilitation who fails to successfully complete it may be terminated from employment. Nothing in this policy prohibits the employee from being disciplined or discharged for other violations and/or performance problems.
4. The District may also bring the matter to the attention of appropriate law enforcement authorities. Any conviction for criminal conduct involving illegal drugs, intoxicants, or controlled substances, whether on or off duty, or any violation of the District's drug and alcohol-free workplace policy, may lead to disciplinary action, up to and including termination.
5. Return-to-Work Agreements: Following a violation of the Drug and Alcohol-Free Workplace Policy, an employee may be offered an opportunity to participate in rehabilitation. In such cases, the employee must sign and abide by the terms set forth in a Return-to-Work Agreement as a condition of continued employment. The inclusion of this paragraph in no way obligates the District to provide a Return-to-Work agreement or make an offer of return to service as an employee.
6. An employee may be granted a Return-to-Work agreement provided the employee has not already had a violation of the Company's Drug and Alcohol- Free Workplace policy or a violation of the DOT /FRA regulated drug and alcohol policy. An employee may only utilize the return- to-work process resulting from a violation once over the course of their employment with the District.

APPROVED DATE: March 18, 2015

REVISED DATE: July 2016

REVISED DATE: January 2021

REVISED DATE: August 2023

REVISED DATE: July 2024



Sonoma-Marin Area Rail Transit

FEDERAL RAILROAD ADMINISTRATION

**CONTROL OF ALCOHOL AND DRUG USE
(49 CFR PART 219)**

**MODEL PART 219
RAILROAD COMPLIANCE PLAN**

Date of FRA Plan Submission:

8/22/2023

Effective Date of Plan:

9/1/2023

MODEL PART 219 RAILROAD COMPLIANCE PLAN

FRA's Model Part 219 Railroad Compliance Plan has been developed by FRA as a tool to assist railroads in complying with the requirements of Title 49, Code of Federal Regulations Part 219 with respect to submission and approval of random alcohol and drug testing and the required programs. This plan, although initially developed for the smaller railroads, may be used by all railroads regardless of class.

Only railroads that are required to comply with Part 219 are authorized to use Federal authority. Therefore, entities having less than 16 covered service employees (unless they operate on tracks of another railroad or otherwise engage in joint operations with another railroad except as necessary for purposes of interchange) are not authorized to utilize Federal authority to conduct Federal random or reasonable cause testing. In those instances, a railroad should use "Company Policy Testing" as their authority. All railroads subject to Part 219.3 would still be responsible for complying with Subpart C – Post-Accident testing requirements.

Simply signing and adopting this plan does not constitute compliance. The actions required by the regulation must be in accordance with regulatory requirements to achieve compliance. **In all cases where there is a difference between this plan and 49 CFR Part 219 or 49 CFR Part 40, the CFR takes precedence.**

Title 49, CFR Part 40 requires employers to have a Designated Employer Representative (DER), defined in 40.3 as "An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these regulated duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of Part 40. Service agents cannot act as DERs." In the past, this person may have been referred to as the Program Administrator.

I. Policy Statement

Sonoma-Marín Area Rail Transit (SMART) recognizes the problem of substance abuse in today's society. This problem poses concerns to an employer who is subject to governmental regulations and seeks to promote the safety of the public. This railroad has a concern for the safety, health, and well-being of its employees as well as an obligation to comply with the United States Department of Transportation (DOT) and Federal Railroad Administration (FRA) regulations. This railroad will comply with all statutes and regulations administered by the FRA in implementing the required Part 219 Drug and Alcohol Program.

Programs have been established on this railroad which requires regulated employees to demonstrate their safety posture through complying with:

1. Urine screens to detect the presence of marijuana, cocaine, opioids, phencyclidine, and amphetamines (See 49 CFR § 40.85 and 49 CFR § 40.87);
2. Breath alcohol tests to detect the unauthorized use of alcohol; and
3. Breath, urine, blood, and tissue (fatality) testing after qualifying FRA post-accident events.

In accordance with the applicable Federal regulations, this railroad prohibits persons who perform work regulated by the Federal Hours of Service (HOS) Laws (see 49 U.S.C. §§ 21101-21108); and/or employees performing duties as Maintenance-of-Way (MOW) workers as described in the definition of "Roadway Worker" in § 214.7; and/or employees performing Mechanical functions (MECH) duties covered by the definition of "Mechanical Employees" in § 219.5, from being under the influence and/or possession of illegal substances and/or under the influence of alcohol while on duty or within four hours of reporting for regulated service. Additionally, illegal substance use is prohibited **on or off duty**, except as allowed in 49 CFR § 219.103.

II. Identifying Information.

Railroad:

Name of Railroad: Sonoma-Marín Area Rail Transit (SMART)

Address: 5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

Office Phone: 707-794-3330

Cell Phone: 707-981-1045

E-Mail: cday-flynn@sonomamarintrain.org

Additional Notes:

Designated Employer Representative:

Name: Colleen Day-Flynn
Address: 5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
Office Phone: 707-794-3330
Cell Phone: 707-981-1045
E-Mail: cday-flynn@sonomamarintrain.org
Additional Notes:

Assistant Designated Employer Representative:

Name: Yasamin Mora Serrano
Address: 5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
Office Phone: 707-794-3330
Cell Phone: 707-981-1045
E-Mail: ymserrano@sonomamarintrain.org
Additional Notes:

Medical Review Officer:

Name: Dr. Janelle Jaworski
Address: 7160 Graham Road
Indianapolis, IN 46250
Office Phone: 317-547-8620
Fax Number: 317-983-7212
E-Mail: mrs@i3screen.com
Additional Notes:

Testing Laboratory (must be on HHS list of certified labs):

Name: Clinical Reference Laboratory (CLR)
Address: 8433 Quivira
Lenexa, KS 66215
Office Phone: 800-445-6917
Fax Number: 913-599-0815
Additional Notes:

Substance Abuse Professional (SAP):

Name: Lisa Wolper, LCSW, SAP
Address: 825 College Ave
Santa Rosa, CA
Office Phone: 707-524-8864
E-Mail: lisawolper@gmail.com

III. Scope

This policy applies to all railroad personnel (including contractors and volunteers) who perform the following FRA regulated duties:

- **Subject to the Federal Hours of Service (HOS) Laws also commonly referred to as “Covered Service” or,**
- **Employees performing Maintenance-of-Way (MOW) duties covered by the definition of “Roadway Worker” in § 214.7 or,**
- **Employees performing Mechanical functions (MECH) duties covered by the definition of “Mechanical Employees” in § 219.5.**

This railroad has a total of **48** regulated service employees (including volunteers and contractors) who perform **“Hours of Service”** functions.

This railroad has a total of **18** regulated service employees (including volunteers and contractors) who perform **“Roadway Worker”** functions.

This railroad has a total of **16** regulated service employees (including volunteers and contractors) who perform **“Mechanical Employee”** functions.

The total number of all regulated employees (**include covered service, roadway workers and mechanical employees**) at the time of this submission is: **82**

Note: Include any regulated contracted employees in the above counts that are included in the railroad’s random testing pools and covered by this policy.

If applicable, identify the following for any regulated contractors your railroad is using (**if you have multiple regulated service contractors please add additional fields as necessary. If you have more than five (5) regulated contractors, use the attachment page at the end of this document**)

Name of contractor: Summit Signals
Regulated service performed for your railroad: Signal Maintenance and Repairs for Freight Operations
Address: 260 Margie Drive
Willits, CA 95490
Contact Person: Alisha Rigano
Office Phone: 707-456-9515
Cell Phone:
E-Mail: summitsignal@pacific.net

Identify whether you operate on tracks of another railroad (or otherwise engage in joint operations with another railroad, except as necessary for purposes of interchange). If so, please list name of railroad(s) and mileage:

Name of railroad: N/A
Total numbers of miles: N/A

Previous Employer Checks: This railroad is required to check on the drug and alcohol testing record of employees it is intending to use to perform regulated duties. This railroad will, after obtaining an employee's written consent, request information from DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee's application or transfer into regulated service. **See 49 CFR 40.25.**

An employee must also be asked whether he or she tested positive (or refused to test) on any Federal pre-employment drug or alcohol test administered by a DOT employer to which the employee applied for, but did not obtain regulated service work during the past two years.

With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including Federal follow-up tests) must be provided to this railroad.

IV. Testing Programs

There are numerous situations when Federal **drug and/or alcohol tests** must be administered for the railroad to be in compliance with 49 CFR Part 219. Personnel performing functions listed in Section III of this policy will be required to submit to a drug and/or alcohol test in the instances set forth, as follows:

- 1) **Pre-Employment Drug Testing** – (49 CFR 219.501) Applicants will be informed that all individuals this company will use for regulated service must be drug-free. Passing a Federal pre-employment drug test is a condition prior to performing regulated service duties. If an applicant refuses to submit to the drug test, or tests positive on the drug test, the applicant will not be considered

qualified to perform regulated service and will not be offered a position in regulated service.

Federal Pre-Employment Alcohol Testing (Optional) – (49 CFR 219.502).
This railroad chooses to conduct Federal alcohol pre-employment testing?
Check one of the following boxes:

Yes No

2) **Federal Reasonable Suspicion Testing** – (49 CFR 219.301)

Regulated service personnel will be **required** to submit to a Federal drug and/or alcohol test whenever a properly trained supervisory employee of this railroad has reasonable suspicion that a regulated employee is currently under the influence of or impaired by a controlled substance or alcohol. Reasonable suspicion must be based on specific, contemporaneous personal observations the supervisor can articulate concerning the employee's appearance, behavior, speech, body odor, chronic effects, or withdrawal effects.

Part 219.11(g) requires supervisory employees to have education and training on alcohol misuse and controlled substance use. The training will cover the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substances. It will also prepare the supervisors to make the decisions necessary in reasonable suspicion and FRA post-accident situations (i.e., what is a qualifying event and who is to be tested).

The observation for alcohol must be made by at least one qualified supervisory employee who has received proper training in the signs and symptoms of alcohol use per 219.11(g). Documentation of this decision must be maintained, as required by Part 219 Subpart J.

The observation for drugs must be made by at least two qualified supervisory employees, one of which has received proper training in the signs and symptoms of drug use/misuse per 219.11(g). One qualified supervisor must be on-site, but the supervisor trained per 219.11(g), although preferred does not have to be the supervisor on-site. Documentation of this decision must be maintained, as required by Part 219 Subpart J.

If operating on tracks of another railroad, this railroad will coordinate with the host railroad and decide how the supervisor on the site will immediately communicate and coordinate decisions to test and who will administer the necessary testing. In all reasonable suspicion cases, the supervisor will ensure that the regulated service person is transported immediately to a collection site for a timely collection of a urine and/or breath specimen. If the regulated service person is deemed not fit to return to work, the supervisor will arrange transportation for the person. **This is not a Federal requirement, but safety will be better assured if accomplished.**

Supervisors must document their observations that led them to decide there was a “reasonable suspicion” to have the regulated service person subjected to Federal drug and/or alcohol testing.

3) **Federal Reasonable Cause Testing** – (49 CFR 219.401)

Authorized but not required. **A railroad must choose whether or not to conduct Federal drug and alcohol Reasonable Cause testing.** If a railroad selects to conduct Federal (DOT) Reasonable Cause testing, then the railroad cannot perform company (non-DOT) testing for any event described in 219.403. If a railroad selects to conduct company (non-DOT) Reasonable Cause testing, then the railroad cannot perform DOT testing for any event described in 219.403.

This railroad chooses to conduct Federal Reasonable Cause drug and alcohol testing for all train accident/incidents and rule violations that meet the criteria of 49 CFR 219.403. Check the appropriate box:

Yes **No**

A Federal reasonable cause drug and/or alcohol test may be required (employer’s decision) when a regulated service employee:

- a. Was involved in a qualifying Train accident/incident per 219.403 (a) and a supervisor has a reasonable belief based on specific and articulable facts that the regulated service person’s acts or omissions contributed to the occurrence or severity of the accident/incident; or
- b. Committed a rule violation described in 219.403 (b).

If operating on tracks of another railroad, this railroad will coordinate with the host railroad and decide how the supervisor on the site will immediately communicate and coordinate decisions to test and who will administer the necessary testing. In all reasonable cause cases, the supervisor will ensure that the regulated service person is transported immediately to a collection site for a timely collection of a urine and/or breath specimen. If the regulated service person is deemed not fit to return to work, the supervisor will arrange transportation for the person. **This is not a Federal requirement, but safety will be better assured if accomplished.**

Supervisors must document their observations that led them to decide there was a “reasonable cause” to have the regulated service person subjected to Federal drug and/or alcohol testing.

4) **FRA Post-Accident Drug/Alcohol Testing** – (49 CFR 219.201)

FRA regulations require blood and urine specimens from all surviving **regulated service personnel** when they are directly involved in a qualifying accident or incident. Tissues are also collected, in addition to urine and blood from any fatality involving an on-duty railroad employee (**direct or “regulated service”**)

contractual employee). Events requiring FRA post-accident testing include (note regulatory exceptions will be followed):

1. **Major Train Accident** involving any rail equipment accident with reportable damages in excess of the current calendar year reporting threshold under 49 CFR Part 225 and one or more of the following:
 - a. A fatality (any fatality).
 - b. A release of hazardous materials from railroad “lading” that results in an evacuation or reportable injury caused by the hazmat release.
 - c. Damage to railroad property of **\$1.5 Million** or more.
2. **Impact Accident** involving reportable damage in excess of the current reporting threshold that results in:
 - a. A reportable injury; or
 - b. Damage to railroad property of \$150,000 or more.
3. **Fatal Train Incident** involving any on-duty railroad employee or regulated contractor employee where damages do not exceed the current reporting threshold.
4. **Passenger Train Accident** with a reportable injury to any person in a train accident involving damage in excess of the current reporting threshold that involves a passenger train.
5. **Human-Factor Highway-Rail Grade Crossing Accident/Incident** meeting one of the following criteria:
 - i. Regulated employee interfered with the normal functioning of a grade crossing signal system, in testing or otherwise, without first providing for the safety of highway traffic that depends on the normal functioning of such a system, as prohibited by § 234.209, is subject to testing.
 - ii. Train crewmember who was, or who should have been, flagging highway traffic to stop due to an activation failure of a grade crossing system, as provided § 234.105 (c)(3), is subject to testing.
 - iii. Regulated employee who was performing, or should have been performing, the duties of an appropriately equipped flagger (as defined in § 234.5), but who failed to do so, due to an activation failure, partial activation, or false activation of the grade crossing signal system, as provided by § 234.105 (c)(1) and (2), 234.106, or 234.107 (c)(1)(i), is subject to testing.

- iv. If there is a fatality of any regulated service employee regardless of fault. (fatally injured regulated employee must be tested)
- v. If regulated employee violates an FRA regulation or railroad operating rules and whose actions may have played a role in the cause or severity of the accident/incident, is subject to testing.

Testing Decision: For an accident that meets the criteria for a Major Train Accident, all assigned **crew members of all involved trains and on-track equipment must be tested.** Test any other regulated service employees that had a possible role in the cause or severity of the accident.

For an Impact Accident, Fatal Train Incident, Passenger Train Accident or Human-Factor Highway-Rail Grade Crossing Accident/Incident, test any other regulated service employees that had a possible role in the cause or severity of the accident. The railroad must exclude other regulated service employee if the responding railroad representative can immediately determine, on the basis of specific information, that the employee had no role in the cause(s) or severity of the accident/incident (considering any such information immediately available at the time).

For a fatal train incident, the fatally injured employee cannot be excluded from being tested.

If there is a fatality of any regulated service employee as result of a Highway-Rail Grade Crossing Accident/Incident, the fatally injured regulated employee must be tested regardless of fault.

Exceptions from Testing: No test may be required in the case of a collision between railroad rolling stock (including any on-track equipment) and a motor vehicle or other highway conveyance at a rail/highway grade crossing, unless it meets the criteria set forth above in Item 5 (i-v).

No test may be required in the case of an accident/incident the cause and severity of which are wholly attributable to a natural cause (e.g., flood, tornado, or other natural disaster) or to vandalism or trespasser(s), as determined on the basis of objective and documented facts by the railroad representative responding to the scene.

The railroad supervisor(s) on the scene will make **timely** determinations as to the event being a qualifying event and which regulated service employees (if any) are required to be tested according to the rule.

This railroad will identify the appropriate personnel who must be tested and then ensure that specimens are collected and shipped.

Collection of Urine and Blood Specimens: Employee specimens will be collected at a medical facility, i.e., hospital, clinic, physician's office, or laboratory where

toxicological specimens can be collected according to recognized professional standards. Specimen collections will be accomplished using the FRA Post-Accident Toxicological Testing Kit. Specimens will be collected, packaged, and shipped via express courier service by the railroad, to the FRA's designated post-accident testing laboratory.

Random Drug and Alcohol Testing – (49 CFR 219.601)

The railroad is responsible for ensuring that the random program meets regulatory requirements and is approved by FRA (see Appendix A). The principles which are required in the FRA regulation for the plan to be in compliance are attached (see Appendix B). The selection process will ensure that each regulated service person has an equal chance of being selected at every random selection. The random plan shall ensure that testing is accomplished at the beginning and at the end of the duty period for alcohol. The **minimum** annual random percentage of alcohol testing at either end of the duty period is 10 percent over the course of the year.

Regulated Service (Covered Service)

Current employers must test at a **minimum** of **25 percent annual rate for drugs and 10 percent annual rate for alcohol** for employees who perform regulated duties subject to the Federal Hours of Service Laws “**Covered Service**”. A railroad is permitted to test at a higher rate than the minimum. You must identify if you are testing at a higher rate and if so, the rate(s):

SMART will test at 25% for alcohol and 25% for drugs.

Regulated Service (Roadway Worker)

Current employers must test at a **minimum** **25 percent annual rate for drugs and 10 percent annual rate for alcohol** for employees who perform regulated duties defined as “**Roadway Worker**” in 49 CFR § 214.7. A railroad is permitted to test at a higher rate than the minimum. You must identify if you are testing at a higher rate and if so, the rate(s):

SMART will test at 25% for alcohol and 25% for drugs.

Regulated Service (Mechanical Employee)

Current employers must test at a **minimum** **50 percent annual rate for drugs and 25 percent annual rate for alcohol** for employees who perform regulated duties defined as “**Mechanical Employee**” in 49 CFR § 219.5. A railroad is permitted to test at a higher rate than the minimum. You must identify if you are testing at a higher rate and if so, the rate(s):

SMART will test at 25% for alcohol and 25% for drugs. SMART's Mechanical Employee's have been included/grandfathered into the Covered Service group above since 2017 due to the position responsibility of maintaining and repairing the Positive Train Control (PTC) system onboard the trains.

Random Testing Pools:

- a) Identify and maintain an up-to-date database or list of all personnel working in regulated service (at least once per quarter) and ensure they are all in the random pool(s). Identify how many random testing pools you have. For example, most short line railroads will have only one random pool, but larger railroads may have multiple pools:
[SMART will have one random testing pool inclusive of Covered Service, Roadway Worker, and Mechanical employees.](#)
- b) Identify what regulated service employee crafts/functions are in each of the railroad's random testing pool(s). For example, engineers, conductors, brakemen, switchmen, utility employees, hostlers, mechanical employees performing hostling duties, train dispatchers, signal maintainers, roadway workers, mechanical workers, etc.
[Signal Technician, Signal Technician Trainee, Supervisor Signals, Supervisor Track Maintenance, Track Laborer, Track Maintainer, Track Maintainer II, Bridge Tender, Conductor, Controller/Supervisor, Engineer-Conductor, Freight Utility Worker, Supervisor Vehicle Maintenance, Vehicle Maintenance Technician, Vehicle Maintenance Technician Trainee.](#)

Random Selection and Testing Procedures:

1. There is only one preferred method of selection: A computer program. The lottery style, e.g., drawing names out of a hat is no longer an acceptable method of selection. Identify the name of the **Computer Program** being utilized and provide a detailed description of the program below:

Name of the computer program being used

[RandomWare](#)

Detailed description of how the computer program functions:

[See Appendix C](#)

2. Identify whether your railroad is making selections by name, ID number, train number, job number, etc.
[ID Number](#)
3. Random Pools are in a consortium controlled by a Third-Party Administrator (C/TPA):
 Yes No
4. If using C/TPA consortium pools, please provide name of the C/TPA pool:

N/A

5. Random Pools are in a stand-alone pool managed by a Third-Party Administrator (TPA):

Yes No

If your railroad is using a consortium/third party administrator to assist in random testing, identify the following information for the C/TPA (If you need to add additional fields use the “+” sign. If you need to delete a field use the “Undo Typing” button):

Name of C/TPA: Alcohol and Drug Testing Services, LLC ADTS

Address: 211 Hobson Ave, Suite B
Hot Springs, AR 71913

Contact Person: Angel Adams

Phone Number: 501-781-2338

Please mark the following services the C/TPA are performing for your railroad:

- None
- Random Pool Maintenance
- Random Pool Selections
- Collection Services – Drug
- Collection Services – Alcohol
- HHS Laboratory
- Medical Review Officer (MRO)
- Substance Abuse Professional (SAP)
- Employee Assistance Professional (EAP)
- Drug and Alcohol Counselor (DAC)
- Other:

6. Identify how often your railroad is making selections, e.g., monthly or quarterly:

Monthly

Note: If selecting quarterly in order to maintain the deterrent effect of random testing for very small railroads and contractors, FRA is requiring each individual random testing pool established under subpart G to select and randomly test at least one entry per quarter, even if fewer tests are needed to meet FRA’s minimum random testing rates.

Objective Procedure, if making quarterly selections:

NA

7. Identify how you determine whether a selection is to be tested for drugs, for alcohol, or both:
SMART will test for both alcohol and drugs on each random pool to meet the 25% testing goal for both alcohol and drugs.

8. Identify your testing “window,” e.g., 30 days:
30 days testing window not to exceed the end of the month.

Note: If you are making monthly selections, the testing windows may not exceed 30 days and not past the end of the month. If you’re making quarterly selections, the testing window is 90 days but not past the end of the quarter.

9. Provide additional descriptions of your random testing selection procedure, as applicable:
NA

10. This railroad will safeguard these selection records to ensure that information concerning collection dates and selections are not disclosed until necessary to arrange for collection or provide notifications.

11. These random testing records are required to be maintained for 2 years. This includes an electronic or hard copy “snapshot” of the random testing pool each time selections are made, a copy of the list of selected employees, a copy of the drug chain of custody form and/or alcohol testing form, and the reason for not testing any of the selected employees.

12. In the event that all or a clearly defined portion of the railroad is subject to an emergency such as a flood or severe ice storm, the ranking operations officer on duty is authorized to declare an emergency by completing a memorandum setting forth the facts necessitating this action. If such an emergency determination is made, the date/time of the emergency and random drug/alcohol tests that were suspended must be entered into the DER’s files. Random selections not administered because of the emergency are deemed void, and the selection numbers will be adjusted later to make the required percentage.

13. Only a substantiated medical emergency involving the selected person or an emergency involving an immediate family member (e.g., birth, death, or a medical emergency) provides the basis for excusing a regulated employee/person from being tested once notified. A medical emergency is defined as an acute medical condition requiring immediate emergency care. A person excluded under these criteria must provide substantiation from a credible outside professional (e.g., doctor, hospital, law enforcement officer, school authority, court official) which can be furnished prior to this release or within a reasonable period of time after the emergency has been resolved. Such excluded (excused) persons will not be tested based on this selection.

14. Once the regulated service person selection is made, the DER will arrange notification. No prior notification will be given. A selected person will only be tested during his/her tour of duty, extended only long enough to complete testing but not to exceed Federal hours of service law requirements. The person, once notified, must proceed to the selected testing facility IMMEDIATELY. Identify how your railroad will notify selected employees: SMART will provide the employee's supervisor (or designee) with a written form notification that the supervisor will deliver to the employee immediately prior to the scheduled test.
15. The collection date and time during the selection period (testing window) will be varied by the DER to ensure that it cannot be anticipated. It is not necessary for the railroad to randomly select the "testing date."

V. Drug Testing Procedures

The designated collection agents will be qualified and follow the proper collection procedures as described in 49 CFR Part 40.

- a. The Medical Review Officer (MRO) will review drug test results as required in 49 CFR Part 40. All test results will be reported exclusively through the MRO.
- b. A laboratory certified by the Department of Health and Human Services/ Substance Abuse and Mental Health Service Administration (DHHS/ SAMHSA), under the Mandatory Guidelines for Federal Workplace Drug Testing Programs, will perform all drug testing.
- c. Test results will be reported from the laboratory only to the MRO for review and action consistent with 49 CFR Part 40.
- d. The name of the individual providing the specimen will remain confidential and will not be provided to the laboratory performing the test. The testing laboratory is only able to identify the specimen by the specimen ID number printed on the chain-of-custody form. The laboratory will only use a urine custody and control form consistent with the requirements of 49 CFR Part 40.
- e. The designated laboratory will only test for the drugs listed in 49 CFR 40.85.
- f. The MRO will verify the results and report (using procedures in 49 CFR Part 40) to the DER whether the test was positive or negative and the drugs for which there was a positive result.

VI. Alcohol Testing Procedures

Breath alcohol testing will be performed by fully trained and certified Breath Alcohol Technicians (BAT) using the National Highway Traffic Safety Administration (NHTSA) approved testing devices. The results will be documented on an approved Federal Breath Alcohol Testing Form and will be signed by the employee and the BAT. At the time of the alcohol test, the employee will receive a copy of the test result, with an identical copy being sent to the railroad's DER.

- a. Negative results. The DER will be mailed a copy of the negative test results.
- b. Positive results. The BAT will immediately and directly notify the railroad's DER if the test results are positive (0.02 percent or higher) who will take appropriate action to remove or restrict the employee from regulated service as required by Part 219.

VII. Drug Test Results

For any FRA testing, the railroad should as a "best practice" notify the employee in writing of test results.

Positive or Otherwise Non-Negative Results. If the laboratory reports the drug test result as POSITIVE or otherwise non-negative, the following procedures will be followed:

- a. The MRO will immediately inform the regulated service person of the result and offer the person the opportunity for an interview to discuss the test result. If the MRO has difficulty reaching the employee, the procedures set forth in 49 CFR 40.131 will be followed.
- b. The MRO will complete and document the review as required by 49 CFR Part 40 Subpart G, determining if the external chain of custody was intact, if the person has a legitimate medical explanation for the presence of any controlled substance, and whether there is any basis to question the scientific sufficiency of the test results. In the case of an opiate positive, the MRO will also make the special determinations required by the regulation.
- c. If the MRO verifies the test result as positive, the MRO will report the result to the railroad's DER. If the MRO determines that the result is non-negative and the non-negative result cannot be explained, the appropriate regulatory action will be pursued. The MRO will report the verified test result in accordance with 49 CFR § 40.163. The MRO will not provide the DER with the quantitative test results unless the employee, as stipulated in the regulation, disputes the test.

Negative results. If the MRO has determined that the drug test is NEGATIVE, the MRO will accomplish the required administrative review and report the negative results to the railroad's DER in accordance with 49 CFR § 40.163.

Negative-dilute results. Unless the MRO directs a railroad to conduct a recollection under direct observation (for a result with creatinine greater than 2mg/dL but less than or equal to 5 mg/dL), per 40.197, a negative-dilute is considered a negative test, although a railroad may, but is not required to direct the employee to immediately take another test. Such recollections must not be collected under direct observation unless there is another basis to do so. A railroad must treat all regulated employees the same. For example, it must not retest some employees and not others. A railroad may establish different policies for different types of tests (e.g., conduct retests in pre-employment situations, but not in random test situations).

This railroad's policy for negative-dilutes that do not require re-collection under direct observation (when ordered by the MRO) is as follows:

SMART will conduct recollection for negative-dilutes for pre-employment tests only.

VIII. Confidentiality

- a. Medical information a regulated person provides to the MRO during the verification process is treated as confidential by the MRO and is not communicated to the railroad except as provided in Part 40.
- b. Confidentiality of Federal drug or alcohol testing results will be maintained as required by the regulations. For example:
 1. The laboratory observes confidentiality requirements as provided in the regulations. This railroad does not advise the laboratory of the identity of persons submitting specimens. The laboratory performing the testing must keep all records pertaining to the drug test for a period of two years.
 2. All test results will remain exclusively in the secure files of the MRO. The MRO will observe strict confidentiality in accordance with the regulations and professional standards. The MRO will retain the reports of individual test results as required in Part 219 Subpart J.
 3. The DER will maintain all test results reported by the MRO, both positive and negative, in secure storage. The results will be retained as required in Part 219 Subpart J. Other personnel will be informed of individual test results only in the case of positive tests and authorized only on a need-to-know basis.

IX. Regulated Service Personnel Training Program (49 CFR 219.11)

Each regulated service person will receive a copy of this policy and the other information requirements in 49 CFR Part 219.23 (e) which clearly states the prohibitions required by the regulation. In addition, each regulated person will be given information concerning the problems caused by alcohol or controlled substances and available methods of intervening when an alcohol or controlled

substance problem is suspected, including confrontation, referral to an employee assistance program and/or referral to management.

X. Prescription Drugs (40 CFR 219.103)

The use of controlled substances (on Schedules II through V of the controlled substance list) is not prohibited if they are prescribed or authorized by a medical practitioner and used at the dosage prescribed or authorized. Either one treating medical professional or a railroad-designated physician should determine that use of the prescription(s) at the prescribed or authorized dosage is consistent with the safe performance of the employee's duties. Regulated service employees should also seek the advice of a medical professional whenever they are taking any over-the-counter drug that may adversely affect the safe performance of duties.

XI. Compliance with Testing Procedures

- a. All regulated service personnel/applicants requested to undergo a Federal drug and/or alcohol test are required to promptly comply with this request. This railroad expects all prospective and current regulated service personnel to exercise good faith and cooperation in complying with any procedures required under this policy. Refusal to submit to a Federal drug or alcohol test required under FRA rules, engaging in any conduct which jeopardizes the integrity of the specimen or the reliability of the test result, or any other violations of the prohibited conduct in 49 CFR 219.101 or 219.102 could subject the person to disciplinary action (up to and including termination), independent and regardless of any test result. This includes failure to show up on time for a drug/alcohol test, failing to remain at the testing site until the testing process is complete, etc. (see 40.191).
- b. All DOT Federal return-to-duty and follow-up urine specimens must be collected under direct observation (using the direct observation procedures in 40.67 (i)). Note that a SAP may also require return-to-duty and follow-up "drug" tests in addition to alcohol tests following an alcohol positive of 0.04 percent or greater.
- c. Direct Observation Urine Collection Procedures: The collector (or observer) must be the same gender as the employee. If the collector is not the observer, the collector must instruct the observer about the procedures for checking the employee for prosthetic or other devices designed to carry "clean" urine and urine substitutes AND for watching the employee urinate into the collection container. The observer will request the employee to raise his or her shirt, blouse or dress/skirt, as appropriate, above the waist, just above the navel; and lower clothing and underpants to mid-thigh and show the observer, by turning around, that the employee does not have such a device.
 - 1) If the employee has a device, the observer immediately notifies the collector; the collector stops the collection; and the collector thoroughly documents the

circumstances surrounding the event in the remarks section of the testing form. The collector notifies the DER. This is a refusal to test.

- 2) If the employee does not have a device, the employee is permitted to return his/her clothing to its proper position for the observed collection. The observer must watch the urine go from the employee's body into the collection container. The observer must watch as the employee takes the specimen to the collector. The collector then completes the collection process.
- 3) Failure of the employee to permit any part of the direct observation procedure is a refusal to test.
- d. As a minimum, a regulated service person will be removed from FRA regulated service for a minimum of nine months if there is a finding of "refusal to test."

XII. Positive Test Results

- a. **Alcohol positive of 0.02 to 0.039:** Regulated service personnel should receive written notification of test results which are other than negative. A Federal positive drug test or a Federal alcohol test result of 0.02 percent or greater or a refusal to test will result in immediate removal from regulated service under FRA regulations. A positive alcohol test of at least 0.02 percent but less than 0.04 percent will result in the removal of the person from regulated service for at least eight hours. The railroad is not prohibited from taking further action under its own company policy.
- b. **Federal violation:** A regulated service person with an MRO verified positive drug test or a breath alcohol test result of 0.04 percent or greater (or a refusal) has violated Federal regulations and must be immediately removed from regulated service. Prior to or upon withdrawing the employee from regulated service, the railroad must provide notice to the employee of the reason for this action. If the employee denies that the test result is valid evidence of alcohol or drug use prohibited by 219.101 or 219.102, the employee may demand and must be provided an opportunity for a prompt post-suspension hearing. **See 219.104 (c) for the hearing provisions.**

Even if the railroad does not wish to keep the employee in its employment, it must provide the above hearing (if requested) and at a minimum provide the employee with a list of qualified Substance Abuse Professionals. Prior to returning to regulated service the employee will be required to undergo an evaluation by a qualified Substance Abuse Professional (SAP) that is railroad approved, to determine the need for treatment and/or education. The employee will be required to participate and comply with the SAP-recommended treatment and any after-care or follow-up treatment that may be recommended or required.

After successful treatment, for a Federal positive drug test (or alcohol test result of 0.04 percent or greater), per the SAP's requirements, the person must provide a Federal return-to-duty urine specimen and/or breath specimen for testing (which is negative) prior to being allowed to return to regulated service. In addition, the person will be subject to additional unannounced Federal follow-up testing, as determined by the SAP, for a maximum period of 60 months, with a minimum of six tests being performed in the first twelve months (**engineers and conductors – SAP will require a minimum of 6 drug tests and 6 alcohol tests in the first 12 months**). Failure to comply with these provisions and remain alcohol and/or drug-free will result in subsequent removal from regulated service and could result in disciplinary action, up to and including termination. Note: Federal regulation does not guarantee the employee will maintain an employment relationship. This is determined via employer and employee negotiation. These Federal return-to-duty and follow-up drug tests must be collected under direct observation.

- c. Identify other employer sanctions (if applicable) for a Federal alcohol test result of at least 0.02 percent but less than 0.04 percent:

SMART employees will be removed from regulated service until their next regularly scheduled duty, but for not less than 8 hours. They need not be evaluated by a SAP, nor are they required to comply with any other FRA requirements before returning to duty.

Identify other employer sanctions (if applicable) for a Federal alcohol test result of 0.04 percent or greater:

SMART will follow the FRA regulations in this instance.

Identify other employer sanctions (if applicable) for a Federal positive drug test:

SMART will follow the FRA regulations in this instance.

XIII. Self-referral, Co-worker referral, and Non-peer referral (optional) Policies

This railroad's policy to comply with 49 CFR Part 219.1001 and 49 CFR Part 219.1003 is as follows:

Employment Relationship. As per 219.1003(b), a regulated employee who enters and follows the tenants of this program as discussed below, will maintain his or her position upon successful completion of an education, counseling, and treatment program as specified by a Drug and Alcohol Counselor (DAC). Before the employee is charged with conduct sufficient to warrant dismissal, the employee must seek assistance through the railroad for his or her alcohol or drug use problem or be referred for such assistance by another employee or by a representative of the employee's collective bargaining unit.

Imminent Detection. An employee may not use the referral program for the purpose of avoiding the imminent and probable detection of a rule violation by a supervising employee. No employee may take advantage of self-referral after being notified of a testing event or while in imminent risk of being detected for possession of alcohol or controlled substances.

Reasonable Suspicion. In the case of a co-worker referral (which is mandatory), or a non-peer referral (which is optional), if the employee accepts the referral and has agreed to a Rule G waiver, there is no need for the railroad to perform a Federal reasonable suspicion test. If the Federal reasonable suspicion test occurs, the referral takes precedence, and a written request shall be submitted to the FRA Drug and Alcohol Program Manager for permission for reclassification to non-DOT status. This will allow the employer to vacate the return-to-duty and follow-up (RTD/FU) requirements of the reasonable suspicion test violation. Thus, the co-worker referral will take precedence and all subsequent RTD/FU testing will be appropriately conducted under non-DOT/company authority as per Part 219 Subpart K. In this scenario, the reasonable suspicion positive test result(s) are not subject to 49 CFR Part 40.25 requests from any subsequent DOT-regulated employers.

In the case of a co-worker referral or a non-peer referral, when the employee does not accept the referral and does not agree to a Rule G waiver, the railroad must properly observe the employee for signs and symptoms of alcohol and/or drug use/misuse. If signs and symptoms are observed, the railroad must perform a Federal reasonable suspicion testing. In this scenario, the reasonable suspicion positive test result(s) are subject to DOT-regulated RTD/FU testing and 49 CFR Part 40.25 requests from any subsequent DOT-regulated employers.

Referral Sources. The railroad must specify whether, and under what circumstances, its policy provides for the acceptance of referrals from other sources, including (at the option of the railroad) supervisory employees. Identify acceptable referral sources besides the affected regulated service employee:

[Co-workers.](#)

This railroad accepts referrals from non-peer sources?

Yes No

Examples of non-peer sources include friends and family, etc. that contact the railroad. A railroad representative will meet with the employee in person regarding the information and determine whether to the employee is unsafe to work with or in violation of 49 CFR Part 219. If the railroad representative determines that employee is unsafe, the employee may either accept or reject the referral.

If rejected, a railroad representative trained in signs and symptoms would perform a Rule G observation on the employee in question. If signs and symptoms are present, then the railroad representative would order reasonable suspicion testing of the on-duty employee.

General Conditions. If the employee accepts the referral, they must contact the DAC within 3 days.

The employee must cooperate with the DAC in the recommended course of counseling or treatment. Locomotive engineers and conductors that do not cooperate with the DAC will be considered to have active substance abuse disorders as per 49 CFR Part 240.119 and 49 CFR Part 242.115 and would have their confidentiality waived.

Once an employee has contacted the DAC, the DAC's evaluation shall be completed within 10 working days. If more than one evaluation is required, the evaluations must be completed within 20 working days.

No follow-up treatment, care, or testing shall exceed 24 months unless it involved a Part 219 violation.

Confidentiality. The railroad treats the referral and subsequent handling, including counseling and treatment, as confidential. With respect to a certified locomotive engineer, conductor or a candidate for certification, the policy of confidentiality is waived (to the extent that the railroad shall receive from the Employee Assistance Professional (EAP) or DAC, official notice of the substance abuse disorder and shall suspend or revoke the certification, as appropriate) if the person at any time refuses to cooperate in a recommended course of counseling or treatment.

Any drug and/or alcohol testing conducted pursuant to this railroad's referral policy is non-Federal testing because a violation of Federal regulations has not occurred.

Leave of Absence. The railroad will grant a minimum leave of absence that the DAC recommends completion of a primary education, counseling, or treatment program and to establish control over the employee's drug or alcohol abuse problem. An employee with an active substance abuse disorder may not perform regulated service until the DAC reports that safety is no longer affected.

Return to Service. The employee will be returned to service on the recommendation of the DAC. The employee must be returned to service within five working days of the DAC's notification to the railroad that the employee is fit to return to regulated service and the receipt of a follow-up testing plan as per Part 219.1003(h)(2). The railroad may condition the employee's return on a return-to-duty medical evaluation.

This railroad requires a return-to-duty medical evaluation?

Yes No

Compensation. 49 CFR Part 219.1001(d)(1) does not require the railroad to compensate the employee for any period that the regulated employee is restricted from performing regulated service under the referral program. However,

compensation at a nominal rate has been seen to markedly increase participation in the referral program to enhance safety at the railroad.

This railroad compensates employees while engaged in a referral program of education, counseling, and treatment?

Yes No

Compensation is at **N/A**% of regular pay while participating in a referral program.

Self-referral: Regulated employees may contact the DAC at the following telephone and/or email address and contact hours:

Drug and Alcohol Counselor (DAC):

Contact person: Lisa Wolper, LCSW, SAP

Address: 825 College Ave
Santa Rosa, CA 95404

Phone Number: 707-524-8864

Optional Provisions.

1. The policy may provide that it does not apply to an employee who has previously been assisted by the railroad under a policy or program substantially consistent with 49 CFR Part 219.1005(c) or who has previously elected to waive investigation under 49 CFR Part 219.1005 (co-worker report policy). **Adopts this option:**

Yes No

If you checked the above option “No”, please identify how many times and/or at what intervals an employee may use the referral programs:

A regulated employee may only utilize this option once over the course of their employment with SMART.

2. A referral policy may provide that the rule of confidentiality is waived if the employee at any time refuses to cooperate in a DAC’s recommended course of counseling or treatment; and/or the employee is later determined, after investigation, to have been involved in an alcohol or drug related disciplinary offense growing out of subsequent conduct. Identify whether you adopt the first, second, or both options:

Adopts Both Options:

Yes No N/A

Adopts 1st Option only:

Yes No N/A

Adopts 2nd Option only:

Yes No N/A

3. The policy may provide that, in order to invoke its benefits, the employee must report to the contact designated by the railroad either during non-duty hours (i.e., at a time when the employee is off duty); or while unimpaired and otherwise in compliance with the railroad's alcohol and drug rules consistent with 219.1005(d).

Identify whether you adopt this optional provision:

Yes No

4. The policy may require successful completion of a return-to-service medical examination as a further condition on reinstatement in regulated service.

Identify whether you adopt this optional provision:

Yes No

5. Other Optional Provisions:

NA

Co-worker referral General Conditions and Procedures.

1. The alleged violation must come to the attention of the railroad as a result of a report by a co-worker that the employee was apparently unsafe to work with or was, or appeared to be, in violation of Part 219 or the railroad's alcohol and drug rules.
2. If the railroad representative determines that the employee is in violation, the railroad will immediately remove the employee from service in accordance with its existing policies and procedures. The railroad must allow the employee the opportunity to accept the co-worker referral. If rejected, the railroad may proceed to reasonable suspicion testing based on signs and symptoms of prohibited alcohol or drug use as determined by a trained supervisor.

APPENDIX A

Once the FRA has approved a Random drug and alcohol testing plan, the railroad will receive an approval letter, which includes these conditions.

STANDARD APPROVAL CONDITIONS FOR RANDOM TESTING PROGRAMS

1. This approval is effective upon receipt with respect to all matters within its scope. FRA reserves administration jurisdiction over all approvals and may reopen review based upon experience gained during implementation (audits).
2. Approval of the subject random testing program does not constitute or imply the granting of a waiver or exemption from any provision of Federal law or regulation. Compliance with all applicable provisions of 49 CFR Parts 219 and 40 is required. All random program plans must be applied in accordance with the criteria listed in this Appendix A and Appendix B.
3. Approval is contingent upon the railroad making appropriate amendments to the program to conform to any pertinent regulatory amendments that may be issued hereafter. Any such program amendments that may be required shall be submitted to the Associate Administrator for Safety at FRA by the effective date of the subject regulatory amendments, or by the expiration of 30 days from publication of the regulatory amendments in the *Federal Register*, whichever is later.
4. Amendments to the program shall be submitted as required by 49 CFR 219.605 and 49 CFR 219.607 and 49 CFR 219.609 and shall not be implemented prior to approval. The following guidance is provided with respect to when a program is deemed to have been amended.
 - A. Any change in the selection methodology, the criteria for scheduling collections, non-availability criteria, or other structural element is a program amendment. Any change in the organizational level at which a function is carried out is a program amendment.
 - B. Substitution of incumbents performing the same function at the same organizational level (persons or contractors/volunteers) is not deemed to amend the program. Notification of these changes would be appreciated to assist FRA in maintaining a liaison but is not required.
 - C. Any change in a program that is occasioned by an amendment of an applicable DOT/FRA regulation and that involves the exercise of discretion to choose between or among one or more courses of action is a program amendment required to be filed under item 3 above. Any non-discretionary change in a program that is required by amendment of an applicable DOT/FRA regulation is not considered a program amendment requiring approval; however, the Office of Safety, FRA, would appreciate receipt of an informational copy of the revised program document showing current compliance.
 - D. Any case not addressed above may be resolved by contacting the Office of Safety, Administrator for Safety or that individual's delegate.

APPENDIX B

CRITERIA FOR ASSESSING DEPARTMENT OF TRANSPORTATION (DOT) RANDOM DRUG AND ALCOHOL TESTING PROGRAMS

Section I. Random Testing Pools

- A. Random pool(s) must accurately and completely include all regulated service personnel. Whoever is performing the safety-sensitive “regulated service”, regardless of job title or status, is subject to 49 CFR Part 219 requirements (supervisors, volunteers, contractors, etc.). Pool lists must be retained for a minimum of two years.
- B. An employer may not mix regulated service and non-regulated service personnel in the same pool.
- C. Multiple pools for an employer are acceptable.
- D. Employees do not need to be placed in separate pools for drug and alcohol testing selection.
- E. Employees from different DOT operating administrations can be included in the same pool. It is strongly recommended, however, that employers not mix groups of personnel subject to different drug or different alcohol testing rates (i.e., having some employees subject to a 50% rate for drugs and other employees subject to a 25% rate in the same pool). If they do, they must test the entire pool at the highest selection rate for any of the groups with personnel in the pool.
- F. Pools may not be diluted with regulated service personnel who rarely perform regulated service duties (i.e., less than once per quarter).
- G. Pools must be routinely updated (i.e., at least monthly for employers with either a changing workforce or seasonal employees; and quarterly for employers with a generally stable workforce).
- H. Besides individual employees, specific jobs (i.e., third shift main dispatcher at XYZ location) or operational units (i.e., trains) may also be pool entries. However, there may not be a significant difference in the size of the entries in the pool.
- I. Pool entries may not be constructed in a way which could result in a manager/supervisor having discretion as to who would be actually provide a sample (e.g., a specific job cannot be selected with multiple people working in it at the same time, but with only one to be tested).

Section II. Random Selections

- A. Everyone in a pool must have an equal chance of selection in each selection period.
 - 1. No individual, job, or operational unit may be removed from the pool if it is still actively performing regulated service. However, employees doing de minimus regulated service may be eliminated from the pool (see Section I.-F).

2. There may be no selections without replacement (i.e., an individual cannot be removed from the pool because he or she was previously tested).
 3. No selection weightings are allowed which would increase or decrease the chance of any individual being selected.
- B. The following selection options are acceptable. Note that manual selection using names or social security numbers drawn out of a hat (or equivalent) is no longer an acceptable practice:
1. Computer programs which randomly select entries from an employee list without apparent bias. The specific selection criteria used by the computer must be extensively detailed in writing, and each computer draw must be retained as a record for a minimum of two years; or
 2. Manual selection from a list of employees using a random-number table. The specific criteria used to select from the table must be documented in writing, including detail on how the initial starting point in the table was determined. Each draw, as well as a copy of the table portion used, must be retained as a record for a minimum of two years.
- C. If the employee testing pool is so small that it does not allow testing each selection period, then the employer must have in place a mechanism to randomly determine which selection periods will have selections and which will not. The specific criteria used to make this determination must be detailed in writing and the determination itself must be retained as a record for a minimum of two years.
- D. If required drug and alcohol testing rates are different (i.e., 25% for drugs and 10% for alcohol) and a single pool is being used, it is permissible to select one list of employees and designate a proportion for both drug and alcohol testing and a proportion for drug testing only. The specific criteria used to make this determination must be detailed in writing, and the master selection list with both sub-groups clearly identified must be retained as a record for a minimum of two years.
- E. Employers should carefully monitor significant changes in its workforce to ensure that an appropriate number of tests will be conducted each year. Unless otherwise directed by the DOT Operating Administration, changes in the employee base of greater than 10% in a quarter should result in a recalculation of total tests required.

Section III. Implementation of Random Collections

- A. Collections must be distributed unpredictably throughout the designated testing period, covering all operating days (including holidays) and shifts (24-hour clock). There is no expectation that day/night or shift collection distributions be equal but there must be sufficient testing to establish deterrence by generally mirroring employer operations.
- B. Collections must be unpredictable within a work shift (some collections must be conducted at the beginning, middle, and end). There is no expectation that “within-shift” collection distributions be equal. Sufficient testing must be

conducted at the start, middle and end of shifts to provide deterrence. Both beginning of and ending of shift collections are particularly important. For alcohol testing, at least 10% of successful collections must fall within each period of the shift.

- C. No discretion is allowed with collection dates or collection times which would result in a subjective choice by a field manager/supervisor as to who was actually collected. That is, if a test time frame is permitted in the employer's program, a manager/supervisor with knowledge of specific personnel assignments may not have discretion in the selection of who will be tested.
- D. Specific reasons for "no-tests" must be documented in writing by the employer, with records maintained for two years. Acceptable reasons for no-tests should relate to critical safety concerns, unforeseen or unpredictable significant adverse impact to operations, or employee illness or vacation.

Section IV. Records

All records which support the random testing program, including notes, memoranda, pool makeups, number tables, etc., must be retained for a minimum of two years.



What You Need to Know About Federal Drug and Alcohol Testing

Federal drug & alcohol testing in the railroad industry must comply with DOT and FRA Federal regulations/procedures. This flier is a cooperative effort to provide regulated employees like you with the information you need to comply with Federal testing. Any other testing would be conducted under company authority.

- DOT and FRA testing regulations (49 CFR Parts 40 and 219) apply to all regulated employees who perform work regulated by the Federal Hours of Service Laws (see 49 U.S.C. §§ 21101-21108) **or** performing duties as Maintenance-of-Way (MOW) workers as described in the definition of “Roadway Worker” in § 214.7 **or** employees performing Mechanical functions (MECH) duties covered by the definition of “Mechanical Employees” in § 219.5. (e.g., train and engine employees, dispatchers, signal employees, roadway workers and mechanical employees).
- Always conduct yourself in a business-like manner and do not joke or make fun of the collection process. Testing is part of your responsibilities as a safety-sensitive rail employee.
- Follow the specimen collector’s instructions; e.g., remove your coat and empty your pockets.
- Be alert during the collection process and save the copies of the forms that are given to you.
- The paper form that is used to record the testing information will identify whether the test is under Federal or company authority, and state the reason for the test. A special form is used for FRA post-accident testing.
- Only the results of a **Federal** test (positive, adulterated, or substituted drug test; positive alcohol test - concentration of 0.04 or more; or refusal) trigger Federal sanctions, which include engineer decertification under Part 240 and conductor decertification under Part 242.
- If you feel you have been wrongfully charged with a Federal drug or alcohol violation, you are entitled to a hearing per 219.104 (c).
- Testing for **drugs** requires a urine specimen. Testing for **alcohol** uses a breathalyzer or a saliva swab (blood is taken for FRA post-accident testing only).

Drug and Alcohol Prohibitions

You are in violation of Federal regulations if you are in possession of alcohol or illegal drugs while assigned to perform regulated service; or if you use alcohol on duty; or within 4 hours of reporting for regulated service; or after receiving notice to report (whichever is the lesser period). Use of illegal drugs is prohibited on or off-duty.

Alcohol Concentration Below 0.02: A regulated employer may not use a Federal test result below 0.02 for Federal or company action. Breathalyzers are not certified at levels below 0.02, so a test result below 0.02 is negative.

Alcohol Concentration 0.02 to 0.039: If you are on railroad property with an alcohol test result from 0.02 through 0.039, your test result is “positive” for alcohol, and the regulated employer must remove you from regulated service for at least 8 hours. The regulated employer is not prohibited from taking further disciplinary action under company policy.

Alcohol Concentration 0.04 or More and/or Illegal/Unauthorized Drug Use: If you test positive for illegal or unauthorized drugs, and/or if you test positive for alcohol at 0.04 or higher,

you are in “violation” of the Federal rules and the regulated employer must remove you from regulated service. To be allowed to return to regulated service, you must first:

- Complete the Federal return-to-duty requirements, including evaluation by a Substance Abuse Professional and any recommended education and/or treatment; and have a negative result on your Federal return-to-duty test.
- If the regulated employer chooses to return you to duty, you may be subject to Federal follow-up testing for up to 60 months. You will take a minimum of six follow-up tests in the year after you return to work.

Drugs Tested: A certified laboratory tests your urine specimen for marijuana, cocaine, opioids, amphetamines, and PCP (and additional drugs for FRA post-accident testing).

Non-Negative Drug Test: The testing laboratory will report a non-negative (positive, adulterated, invalid, or substituted result) to the regulated employer’s Medical Review Officer (MRO).

- If your test result is non-negative, the MRO will interview you to determine whether you have a legitimate medical explanation for your test result (for example, use of a prescribed medication).
- The MRO will inform you of your right to request a test of your “split specimen” at a different laboratory. The regulated employer may charge the cost of testing your split specimen back to you if your split specimen test result is positive; and you only have 72 hours to make this request.

Prescription and Over-The-Counter Medications

You must inform one of your treating physicians of all the prescribed and over-the-counter drugs you are taking so that your doctor can determine if your use of these drugs is consistent with the safe performance of your duties.

- You must use the medication at the doctor’s prescribed or authorized dosage.
- The regulated employer may require you to obtain prior approval for any drugs you are taking.
- **Use Only Prescriptions in Your Name:** You may only legally use medications prescribed for you. You are not authorized to use medication prescribed for someone else, such as medications prescribed for your spouse, parents, or children. Using someone else’s prescription drugs can result in a positive Federal test result.

Direct Observation Urine Collection

Federal regulations require a collector or observer to directly observe you while you provide your urine specimen if:

- Your previous urine specimen was out of normal temperature range; or
- The collector previously observed you attempting to tamper or substitute a specimen; or
- Your previous test result was invalid due to an interfering substance and you did not have a legitimate medical explanation; or
- Your split specimen could not be tested following a non-negative test result; or
- A Federal return-to-duty or follow-up test (after you’ve had a Federal positive test result or refusal to test). The collector (or the observer) must be of the same gender as you for direct observation collections.

Shy Bladder (If you have difficulty providing a urine specimen)

- After your first unsuccessful attempt to provide an acceptable specimen, you have up to 3 hours to produce a single specimen of sufficient volume (you can’t combine specimens). You can consume up to 40 ounces of fluid.
- If you do not provide a specimen within those 3 hours, you must undergo a medical evaluation to determine if there was a medical reason for your inability to do so. If a

physician determines that there was no medical reason for your failure to provide a urine specimen, you will be charged with a refusal.

- Hours of service limitations generally apply to random collections except when the collector determines a direct observation collection is required (as referenced above).

Refusal to Test

A refusal to take a Federal test usually has harsher penalties than a positive test result. **Never** refuse to cooperate with the testing requirements. Take the test and if needed, address any issues you have later. A refusal includes:

- Failure to appear for a test or remain at the testing site
- Failure to cooperate with the testing process
- Failure to provide a sufficient amount of breath or urine (without an adequate medical explanation as determined by a physician through a required medical evaluation)
- Adulteration or substitution of your urine specimen
- Failure to permit any part of the direct observation procedures.

Fatal Flaws

There are only a few procedural errors serious enough to be considered “fatal” flaws that cause a Federal drug or alcohol test to be cancelled. A fatal flaw is a non-correctable procedural error which calls into question whether the specimen tested was really yours or whether the test result on your specimen was correct (for example, if the specimen ID numbers on your specimen bottle do not match those on your test form).

Highway- Rail Grade Crossing Accidents

If you are involved in a collision at a Highway-rail grade crossing, the event would *not* normally meet the criteria for Post-Accident testing, unless it meets specific Human Factor criteria described in 49 CFR Part 219.201(5)(i-v).

Since FRA regulations cover specific criteria for post-accident testing at highway-rail grade crossings, State and local laws on toxicological testing after rail accidents may not apply. **But**, an officer can still require you to be tested if he or she has “probable cause” to suspect that you were impaired (this has to be more than just the fact that an accident occurred - for example, the officer finds an open beer bottle in the cab) at the time of the accident. FRA does **not** advise resistance to law enforcement action. You must comply if the officer decides to test you. A carrier officer should become involved in this discussion immediately.

Voluntary Referral and Co-Worker Report Policies

- All regulated employers must have both of these programs available if you decide to voluntarily initiate action to address a substance abuse problem, whether that problem is yours or that of a co-worker.
- If you ask for help or a co-worker refers you under one of these programs, the regulated employer must keep you in their employment, maintain your confidentiality, and provide you a leave of absence as specified by the Drug and Alcohol Counselor (DAC) for treatment.
- You must follow the program’s guidelines to maintain these employee protections. The regulated employer is required to offer you only one “bite at the apple,” but programs vary. Check with your employer.

For more complete information review 49 CFR Part 40 and Part 219, ask your union representative, or your regulated employer’s Designated Employer Representative (DER) to share additional information with you. Text of the CFR is available at:

<http://railroads.dot.gov/divisions/partnerships-programs/drug-and-alcohol>.

ADDITIONAL ATTACHMENT INFORMATION

Appendix C

Random Ware

Random Selection Software

P.O. BOX 30704, Long Beach CA 90803. (323)793-1636. Email: solutions@r-randomware.com

Random Selection and Uniform Distribution: How Fairness is Guaranteed.

Drug and alcohol testing is a controversial practice and the issue of "fairness" looms at the heart of the random testing procedure. The individual who is "randomly" selected always questions the fairness of the practice and will likely consider it biased at best. In the event someone is randomly selected on a subsequent occasion, fairness becomes an even greater issue. The drug test program administrator who understands the mechanics of computer generated random selections can help avoid the negative mindset fostered by misconceptions of discrimination and fairness.

The U.S. Department of Transportation (DOT) regards computer generated random selection compliant with their regulations as noted: *CITE 49CFR382.3or; Subpart (j) (Department of Transportation TITLE 49) (j) The selection of drivers for random alcohol and controlled substances testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each driver shall have an equal chance of being tested each time selections are made.* The single point defining the requirement is the hardest to adequately defend with a short explanation but is really quite simple: "...each driver shall have an equal chance of being tested each time selections are made... The guarantee of "equal chance" is the provision for a fair and unbiased selection. The mathematical property of "uniform distribution" is the guarantee of "equal chance." If a random selection process provides everyone an equal chance of selection, then it must generate random numbers with uniform distribution.

The flip of a coin provides the simplest example. The procedure must first be well defined: Flip a coin adequately high into the air and allow it to land on a hard surface from which it will bounce with reasonable energy. If you flip the coin twice, it can very likely land "heads" both times. In fact, if you flip it three or four times it's possible it may land "heads" each time. If, however, you were to flip the coin 1000 times, the difference between the number of heads and tails is likely to be small. As you significantly increase the number of coin tosses, the difference will tend to zero. In a simple, yet straightforward way, this procedure demonstrates the uniform distribution of the possible outcomes and the equal chance the coin will land heads or tails.

How does this relate to random selection for drug and alcohol testing? Consider the fairly routine procedure to randomly select 10 individuals from a list of 100. If you conduct the procedure only a few times, uniform distribution can't be adequately demonstrated. If you conduct the selection 1000 times, and the routine generates outcome with uniform distribution, each of the 100 individuals will be selected in relatively equal numbers, each person will be picked approximately 10 times. This demonstrates uniform distribution

Computer driven random number generators reliably produce results with uniform distribution. If you're using software to randomly select drug and alcohol testing participants, you can easily put the system to a simple test.

The following procedure will provide reasonable evidence: Ask the system to randomly pick 10 numbers between 1 and 100, and ask it to do it 1000 times, consecutively. The resulting list will contain ten thousand (10,000) numbers, each between 1 and 100. If you sort the list it's easy to determine the relative frequency of each number. Simply ask the software to count the occurrence of each number generated if it has the capability. If the randomization algorithm generates numbers with uniform distribution, each number, 1,2,3,4,... 100, will appear in the list with approximately equal frequency, i.e., each number, 1,2,3, ... 100 will occur roughly about 100 times. If your system can produce this kind of evidence, you can provide the proof required to demonstrate that every individual in the list has the exact same chance of selection.

The random selection procedure need never concern itself with a name or an individual's personal identification number, whether it's a social security number or other proprietary identifier. Once again, consider the list of 100 individuals. The most natural identifier to assign each entry in the list is simply the number that represents their order in the list. Sort the list and everyone's identifier changes. Randomly sort the list and everyone is randomly assigned an identifier. Randomly generate 10 numbers between 1 and 100 and select the entries in the list that correspond to the numbers. Nothing could be more fair and unbiased. This is the heart of the random selection process. Simple, straightforward, fair.



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

July 17, 2024

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

SUBJECT: Authorize the General Manager to Award Contract No. PL-BB-24-001 with Square Signs LLC. DBA Front Signs

Dear Board Members:

RECOMMENDATION

Adopt Resolution No. 2024-23 Authorizing the General Manager to Award Contract No. PL-BB-24-001 with Square Signs LLC dba Front Signs in an amount of \$599,446.99, and additional approval authority of up-to \$137,191.10 to incorporate items within Additive Alternate A (Table 2) and for project contingency for a total project cost of up to \$736,638.09. This contract will furnish and install system-wide pathway wayfinding signage.

SUMMARY

SMART issued an Invitation for Bid (IFB) to Furnish & Install System-Wide Pathway Wayfinding Signage (Solicitation No. PL-BB-24-001) on May 22, 2024. The solicitation included fabrication and installation of signs within SMART's right-of-way on constructed segments of pathway, optional installation of signs within SMART's right-of-way for segments of pathway currently in construction, optional installation of signs outside of SMART's right-of-way, optional fabrication of signs for future planned pathway, and optional fabrication of spare panels (attic stock) for maintenance purposes.

SMART received two bids by the bid deadline of June 21, 2024. The bids were submitted by the following firms.

Bidders	*Total Bid Amount
1. Square Signs LLC. DBA Front Signs	\$676,511.89
2. TFN Architectural Signage	\$944,910.95

The total bid amount included the Base Bid and all additive bid items.

The Invitation for Bid included a base bid and four additive alternate bid tables summarized here:

Bid Table Descriptions	Scope
Base Bid (Table 1)	Fabrication of Pathway signs for completed and in construction Pathway, and the installation of wayfinding within SMART’s right-of-way for the completed sections of pathway.
Additive Alternate A (Table 2)	Installation of wayfinding signs on constructed Pathway outside of SMART’s ROW, by segment.
Additive Alternate B (Table 3)	Installation of wayfinding on Pathways in construction.
Additive Alternate C (Table 4)	Fabrication of wayfinding signage for future Pathway Segments.
Additive Alternate D (Table 5)	Fabrication of spare sign panels (attic stock).

Staff is recommending that SMART award the contract initially with the Base Bid, Additive Alternate B, and Additive Alternate D to allow for the fabrication of the all the wayfinding signage proposed for the SMART Pathway alignment (i.e. all segments that are complete or in construction within SMART’s right-of-way), the installation of wayfinding within SMART’s ROW, the installation of wayfinding on the Pathway currently under construction by SMART, and for attic stock to retain spare panels for replacement as required with maintenance.

In addition, Staff is requesting authority for the General Manager to execute items under Additive Alternate A, for the installation of wayfinding outside of SMART’s jurisdiction, at a later date as this work will be dependent on the approval, permitting, and maintenance agreements with the respective jurisdictions. SMART is working with our partner agencies to secure the necessary approvals to move forward.

Staff has determined that Additive Alternate C (Table 4) will not be pursued at this time as the specific signs included are for segments of pathway yet to be constructed, and therefore is not seeking authority to authorize the fabrication.

BACKGROUND

In April 2023, SMART began the planning and design work for Pathway Wayfinding to address the community’s desire to see navigation information along the Pathway. SMART awarded Agreement No. PL-PS-23-001 to TDG Engineering, Inc. on April 26, 2023, to design the signs and placement plan for the SMART Pathway. The Project involved extensive field work and public outreach that were used to finalize the design and the Wayfinding Placement Plan. Engagement activities included:

- an online and in-person intercept survey,
- virtual public workshop,

- presentations and discussions at Bicycle and Pedestrian Advisory Committee Meetings in Sonoma and Marin counties,
- partner discussions, and
- a survey with the initial design mock-ups, including mock-up signs placed in the field.

Input generated from these engagement activities informed and were incorporated into the final design and placement plan. Upon delivery of the final wayfinding placement plan and individual sign layouts, SMART was able to issue the Invitation for Bid to Furnish and Install System-Wide Pathway Wayfinding Signage. Separately, in October 2023, SMART successfully secured grant funds through the Clean CA Grant Program to support this Pathway wayfinding fabrication and installation project.

Approval of Resolution No. 2024-23 will allow SMART to implement Pathway Wayfinding and support the successful draw down the Clean CA grant funding.

FISCAL IMPACT: The fiscal impact of the project is up to \$736,638.09, which is budgeted in FY25 with Measure Q and state funding through the Clean CA Grant Program.

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

Respectfully,

/s/

Emily Betts
Planning Manager

Attachment(s):

1. Resolution No. 2024-23
2. Square Signs LLC. DBA Front Signs Contract No. PL-BB-24-001

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
APPROVING CONTRACT NO. PL-BB-24-001 WITH SQUARE SIGNS LLC DBA FRONT SIGNS FOR THE
FABRICATION AND INSTALLATION OF PATHWAY WAYFINDING**

WHEREAS, the Sonoma-Marín Area Rail Transit District (SMART) prepared design intent drawings and a placement plan for the fabrication and installation of Pathway Wayfinding; and

WHEREAS, SMART issued a formal Invitation for Bid for Contract No. PL-BB-24-001 on May 22, 2024, which included advertising the opportunity in local newspapers, trade journals, the SMART website, and other outreach outlets; and

WHEREAS, SMART received two bids on June 21, 2024; and

WHEREAS, Square Signs LLC. Dba Front Signs submitted the lowest bid amount; and

WHEREAS, SMART has made the determination that Square Signs LLC. Dba Front Signs submitted the lowest responsive and responsible bid; and

NOW, THEREFORE, BE IT RESOLVED that Board of Directors hereby finds, determines, declares, and orders as follows:

1. The General Manager is authorized to execute Contract No. PL-BB-24-001 with Square Signs LLC. Dba Front Signs in the amount of \$599,446.99
2. The General Manager is authorized to approve up to \$137,191.10 to incorporate items within Additive Alternate A (Table 2) and for project contingency for a total project cost of up to \$736,638.09

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 17th day of July, 2024, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

Eric Lucan, Chair, Board of Directors
Sonoma-Marín Area Rail Transit District

ATTEST: _____
Leticia Rosas, Clerk of the Board of Directors
Sonoma-Marín Area Rail Transit District

DOCUMENT 00 52 00
AGREEMENT FOR CONTRACTOR SERVICES

This agreement (“Agreement”), dated as of July 17, 2024 (“Effective Date”) is by and between the Sonoma-Marin Area Rail Transit District, a Special District of the State of California (hereinafter “SMART”), and Square Signs LLC dba Front Signs, whose place of business is located at 3520 W Valhalla Drive, Burbank, CA 91505 (hereinafter “Contractor”).

FURNISH & INSTALL
SYSTEM-WIDE PATHWAY WAYFINDING SIGNAGE
CONTRACT # PL-BB-24-001

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set for, Contractor and SMART agree as follows:

A G R E E M E N T

ARTICLE 1. LIST OF EXHIBITS

Section 1.01 The following exhibits are attached hereto and incorporated herein:

- (a) Exhibit A: Schedule of Rates
- (b) Exhibit B: Grant Requirements

ARTICLE 2. WORK.

Section 2.01 Contractor shall complete all work specified in the Contract Documents, in accordance with the Specifications, Drawings, and all other terms and conditions of the Contract Documents.

ARTICLE 3. NOTICES TO SMART.

Section 3.01 SMART has designated Alexandra Majoulet, Project Manager, to act as SMART’s Representative(s), who will represent SMART in performing SMART’s duties and responsibilities and exercising SMART’s rights and authorities in Contract Documents. SMART may change the individual(s) acting as SMART’s Representative(s), or delegate one or more specific functions to one or more specific SMART’s Representatives, including without limitation engineering, architectural, inspection and general administrative functions, at any time with written notice and without liability to Contractor. Each SMART Representative is the beneficiary of all Contractor obligations to SMART, including without limitation, all releases and indemnities.

Section 3.02 All notices or demands to SMART under the Contract Documents shall be to SMART’s Representative at: **5401 Old Redwood Hwy Suite 200, Petaluma, CA, 94954** or to such other person(s) and address(es) as SMART shall provide to Contractor.

Project Manager: Alexandra Majoulet
Phone: (o) 707-285-8186 (m) 707-981-1040
Email: amajoulet@sonomamarintrain.org

ARTICLE 4. CONTRACT TIME

Section 4.01 Contract Time and Notice to Proceed.

SMART may give a Notice to Proceed at any time within 60 Days after the Notice of Award. Contractor shall not do any Work at the Site prior to being issued a Notice to Proceed.

Completion of fabrication and installation of all items within Table 1 (Base Project) shall be no later than November 30, 2024.

Completion of installation of items within Table 2 (Additive Alternate A) shall be no later than February 28, 2025.

Completion of installation of items within Table 3 (Additive Alternate B) shall be no later than March 30, 2025.

Completion of fabrication and delivery of items within Table 5 (Additive Alternate D) shall be no later than December 15, 2024.

Contractor shall complete the Work so that a Final Inspection Report can be issued in accordance with Section 01770 (Contract Closeout).

ARTICLE 5. CONTRACT SUM.

Section 5.01 SMART shall pay Contractor the Contract Sum for completion of Work in accordance with the Contract Documents as follows:

Total Contract Sum: \$599,446.99

The Contract Sum includes all allowances (if any).

ARTICLE 6. CONTRACTOR REPRESENTATIONS.

In order to induce SMART to enter into this Agreement, Contractor makes the following representations and warranties:

Section 6.01 Contractor has visited the Site and has examined thoroughly and understood the nature and extent of the Contract Documents, Work, Site, locality, actual conditions, as-built conditions, all local conditions, and all federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.

Section 6.02 Contractor has examined thoroughly and understood all reports of exploration and tests of subsurface conditions, as-built drawings, drawings, products

specifications or reports, available for Bidding purposes, of physical conditions, including Underground Facilities, or which may appear in the Drawings. Contractor accepts the determination set forth in these Documents and Document 00 70 00 - General Conditions of the limited extent of the information contained in such materials upon which Contractor may be entitled to rely. Contractor agrees that, except for the information so identified, Contractor does not and shall not rely on any other information contained in such reports and drawings.

Section 6.03 Contractor has conducted or obtained and has understood all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in Section 5.2 of this Document 00 52 00 - Agreement) that pertain to the subsurface conditions, as-built conditions, Underground Facilities and all other physical conditions at or contiguous to the Site or otherwise that may affect the cost, progress, performance or furnishing of Work, as Contractor considers necessary for the performance or furnishing of Work at the Contract Sum, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Document 00 70 00 - General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.

Section 6.04 Contractor has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

Section 6.05 Contractor has given SMART prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in or among the Contract Documents and as-built drawings and actual conditions and the written resolution thereof through Addenda issued by SMART is acceptable to Contractor.

Section 6.06 Contractor is duly organized, existing and in good standing under applicable state law, and is duly qualified to conduct business in the State of California.

Section 6.07 Contractor has duly authorized the execution, delivery and performance of this Agreement, the other Contract Documents and the Work to be performed herein. The Contract Documents do not violate or create a default under any instrument, agreement, order or decree binding on Contractor.

Section 6.08 Contractor has listed the following Subcontractors pursuant to the Subcontractor Listing Law, California Public Contract Code §4100 *et seq.*:

Name of Subcontractor and Location of Mill or Shop	Description of Work: Reference To Bid Items	Subcontractor's License No.
N/A – No Subcontractors	N/A – No Subcontractors	N/A – No Subcontractors

Section 6.09 Contractor has designated **Mario Ortiz**, Project Manager, to act as Contractor's Representative(s), who will represent Contractor in performing Contractor's duties and responsibilities and exercising Contractor's rights and authorities in Contract Documents. Contractor has also designated **Karen Basentsyan**, Superintendent, to act as Contractor's Superintendent. Contractor may change the individual(s) acting as Contractor's Representative(s), or delegate one or more specific functions to one or more specific Contractor's Representatives, at any time upon prior written notice and approval and without liability to SMART, but Contractor is limited to two representatives.

Project Manager:	Mario Ortiz	Superintendent:	Karen Basentsyan
Phone:	818-290-3269	Phone:	747-214-9825
Email:	mario@frontsigns.com	Email:	karen@frontsigns.com

ARTICLE 7. CONTRACTOR DOCUMENTS.

Section 7.01 Contract Documents consist of the following documents incorporated by reference, including all changes, Addenda, and Modifications thereto:

Document 00 52 00:	This Agreement
IFB:	Invitation for Bid
Document 00 70 00:	General Conditions
General Requirements:	General Requirements
Technical Specifications:	Phase 1 Placement Plan
Technical Specifications:	Sign Schedule

Section 7.02 There are no Contract Documents other than those listed in Section 7.01. The Contract Documents may only be amended, modified or supplemented as provided in Document 00 70 00 - General Conditions.

ARTICLE 8. INSURANCE.

Contractor shall procure and maintain for the duration of the Agreement insurance against all claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees, or subcontractors with limits and deductibles specified below:

Section 8.01 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 8.02 General Liability Insurance. Commercial General Liability insurance covering products-completed and ongoing operations, property damage, bodily injury and personal injury using an occurrence policy form, in an amount no less than \$5,000,000 per occurrence. Said insurance shall remain in effect for five (5) years after Final Completion and acceptance of the final payment for the Work, contractual liability, and coverage for explosion, collapse, and underground hazards.

Said policy shall include a Railroads CG 24 17 endorsement removing the exclusion of coverage, if applicable, for bodily injury or property damage arising out of operations within 50 feet of any railroad property and affecting any railroad bridge, trestle, tracks, roadbeds,

tunnel, underpass or crossing.

Section 8.03 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 8.04 Endorsements. Prior to commencing work, Contractor 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 (as applicable). Additionally, Contractor shall list all other municipalities as additionally insured in a similar format when work will take place on a municipality's property.
- (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 Contractor 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 Contractor. Said policy shall protect Contractor 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) Contractor hereby grants to SMART a waiver of any right to subrogation which any insurer of said Contractor may acquire against SMART by virtue of the payment of any loss under such insurance. Contractor 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. The insurance underwriter(s) for all insurance policies except Workers' Compensation shall have an A.M. Best Company rating of A VII or better. Such insurance company shall be authorized to transact business in the state of California. Required minimum amounts of insurance may be increased should conditions of Work, in opinion of SMART, warrant such increase. Contractor shall increase required insurance amounts upon direction by SMART.

Section 8.05 Deductibles and Retentions. Contractor shall be responsible for payment of any insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insured. Contractor shall also be responsible for the payment of all deductibles or retention on Contractor's policies without right of contribution from SMART.

Section 8.06 Injuries. If injury occurs to any employee of Contractor, Subcontractor or sub-subcontractor for which the employee, or the employee's dependents in the event of employee's death, is entitled to compensation from SMART under provisions of the Workers' Compensation Insurance and Safety Act, as amended, or for which compensation is claimed from SMART, SMART may retain out of sums due Contractor under Contract Documents, amount sufficient to cover such compensation, as fixed by the Act, as amended, until such compensation is paid, or until it is determined that no compensation is due. If SMART is compelled to pay compensation, SMART may, in its discretion, either deduct and retain from the Contract Sum the amount so paid, or require Contractor to reimburse SMART.

Section 8.07 Subcontractor Responsibility. Contractor shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure SMART is named additional insured on insurance required from subcontractors.

Section 8.08 Claims Made Coverage. If any insurance specified above is written on a claims-made coverage form, Contractor 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, Contractor shall purchase "extending reporting" coverage for a minimum of three (3) years after completion of the work.

Section 8.09 Documentation. The following documentation shall be submitted to SMART:

- (a) Properly executed Certificates of Insurance clearly evidencing all coverages and limits required above. Said Certificates shall be submitted prior to the execution of this Agreement. At SMART's request, Contractor shall provide certified copies of the policies that correspond to the policies listed on the Certificates of Insurance. Contractor 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.

Contractor agrees to maintain current endorsements evidencing the above-specified requirements on file with SMART for the duration of this Agreement.

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

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

Section 8.10 Policy Obligations. Contractor's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

Section 8.11 Material Breach. If Contractor, 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 Contractor resulting from said breach. Alternatively, SMART may purchase such required insurance coverage, and without further notice to Contractor, SMART may deduct from sums due to Contractor any premium costs advanced by SMART for such insurance. These remedies shall be in addition to any other remedies available to SMART.

Section 8.12 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice to SMART.

ARTICLE 9. MISCELLANEOUS.

Section 9.01 Terms and Abbreviations. Terms and abbreviations used in this Agreement are defined in Document 00 70 00 - General Conditions and Section 01420 (References and Definitions) and will have the meaning indicated therein.

Section 9.02 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. If paper meets the 30 percent requirement, the recycling logo should be printed on the project.

Section 9.03 Signers of this Agreement. It is understood and agreed that in no instance are the persons signing this Agreement for or on behalf of SMART or acting as an employee, agent, or representative of SMART, liable on this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of the SMART is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.

Section 9.04 No Assignment of Contract. Contractor shall not assign any portion of the Contract Documents, and may subcontract portions of the Contract Documents only in compliance with the Subcontractor Listing Law, California Public Contract Code §4100 *et seq.*

Section 9.05 Assignment of Rights to Awarding Body. In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time SMART tenders final payment to Contractor, without further acknowledgment by the parties.

Section 9.06 Prevailing Wages. Contractor and all Subcontractors shall pay to all workers employed not less than the prevailing rate of wages as determined in accordance with the Labor Code as indicated herein.

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

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

Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are deemed included in the Contract Documents and shall be made available to any interested party on request.

Pursuant to Section 1861 of the Labor Code, Contractor represents that it is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the Work of the Contract Documents.

Section 9.07 Licensing Laws. The Contractor and all subcontractors shall comply with the provisions of Chapter 9 Division 3 of the Business and Professions code concerning the licensing of contractors. All Contractors shall be licensed in accordance with the laws of the State of California and any Contractor not so licensed is subject to the penalties imposed by such laws. Prior to commencing any work under contract, all Contractors and subcontractors must show that they hold appropriate and current Contractor Licenses in the State of California. The Contractor shall provide such subcontractor information, including the class type, license, number, and expiration date to SMART.

Section 9.08 California Air Resources Board ("CARB") In-Use Off-Road Diesel-Fueled Fleets Certification of Compliance. Contractor shall comply, and shall ensure all subcontractors comply, with all applicable requirements of the most current version of the regulations imposed by California Air Resources Board ("CARB") including, without limitation, all applicable terms of Title 13, California Code of Regulations Division 3,

Chapter 9 and all pending amendments (“Regulation”). Throughout this agreement, and for three (3) years thereafter, Contractor shall make available for inspection and copying any and all documents or information associated with Contractor’s and its subcontractors’ fleets including, without limitation, the Certificates of Reported Compliance (“CRCs”), fuel/refueling records, maintenance records, emissions records, and any other information the Contractor is required to produce, keep, or maintain pursuant to the Regulation upon two (2) calendar days’ notice from SMART. Contractor shall be solely liable for any and all costs associated with compliance with the Regulation as well as for any and all penalties, fines, damages, or costs associated with any and all violations, or failures to comply with the Regulation.

Section 9.09 Drug-Free Workplace. Contractor certifies that it will provide a drug-free workplace in compliance with Government Code §8350-§8357.

Section 9.10 Continuation of Work. Should any part, term or provision of this Agreement or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void or unenforceable, all remaining parts, terms and provisions shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. If the provisions of any law causing such invalidity, illegality or unenforceability may be waived, they are hereby waived to the end that this Agreement and the Contract Documents may be deemed valid and binding agreements, enforceable in accordance with their terms to the greatest extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by this reference (or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).

Section 9.11 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 9.12 Claims Procedures. Contractor accepts the claims procedure established by Article 12 of Document 00 70 00 - General Conditions, as established under Section 930.2 of the California Government Code.

Section 9.13 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 9.14 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 9.15 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 9.16 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.

CONTRACTOR: SQUARE SIGNS, LLC DBA FRONT SIGNS

By: _____
Gevorg Hambardzumyan, CEO

Date: _____

SONOMA-MARIN AREA RAIL TRANSIT (SMART)

By: _____
Eddy Cumins, General Manager

Date: _____

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

By: _____
Ken Hendricks, Procurement and Contracts Manager

Date: _____

APPROVED AS TO FORM FOR SMART:

By: _____
District Counsel

Date: _____

**EXHIBIT A
SCHEDULE OF RATES**

BASE PROJECT						
TABLE 1						
Item #	Description	REFERENCE	QTY	UOM	Per Unit Price	Total Item Price
1	Mobilization	N/A	1	LS	\$30,965.00	\$30,965.00
2	Sign Type D1	SG5.00	78	EA	\$1,067.00	\$83,226.00
3	Sign Type D11a	SG5.03	16	EA	\$545.60	\$8,729.60
4	Sign Type D11b	SG5.03	43	EA	\$545.60	\$23,460.80
5	Sign Type D3	SG5.01	59	EA	\$591.80	\$34,916.20
6	Sign Type PG	SG5.05	51	EA	\$600.60	\$30,630.60
7	Sign Type PI	SG5.06	171	EA	\$356.40	\$60,944.40
8	Sign Type PIb	SG5.07	15	EA	\$574.20	\$8,613.00
9	Sign Type PT	SG5.08 and SG5.09	100	EA	\$855.60	\$85,560.00
10	Sign Type R2	SG5.04	13	EA	\$525.80	\$6,835.40
11	Sign Type R3	SG5.04	5	EA	\$525.80	\$2,629.00
12	Installation of Group 1 Signs	Reference Attach. D & E	1	LS	\$65,560.00	\$65,560.00
TOTAL BASE PROJECT PRICE:						\$442,070.00

ADDITIVE ALTERNATE B						
TABLE 3						
Item #	Description	REFERENCE	QTY	UOM	Per Unit Price	Total Item Price
24	Installation at McInnis Pkwy. to Smith Ranch Rd.	SG4.14 - SG4.16	1	LS	\$6,278.03	\$6,278.03
25	Installation at Southpoint Blvd. to Main St.	SG4.47 - SG4.51	1	LS	\$15,246.64	\$15,246.64
26	Installation at Golf Course Dr. to Bellevue Ave.	SG4.57 - SG4.61	1	LS	\$16,143.50	\$16,143.50
27	Installation at Airport Blvd. to Windsor River Rd.	SG4.73 - SG4.79	1	LS	\$23,766.82	\$23,766.82
28	Sign Type PG	SG.05	40	EA	\$506.00	\$20,240.00

ADDITIVE ALTERNATE D

TABLE 5 – ATTIC STOCK

Item #	Description	REFERENCE	QTY	UOM	Per Unit Price	Total Item Price
38	Sign Type D1 SMART logo Panel with All Artwork	SG5.00	20	EA	\$189.20	\$3,784.00
39	Sign Type D1 Great Redwood Trail logo Panel with All Artwork	SG5.00	20	EA	\$189.20	\$3,784.00
40	Sign Type D1 Destination Panel, blank	SG5.00	30	EA	\$189.20	\$5,676.00
41	Sign Type D11a	SG5.03	10	EA	\$545.60	\$5,456.00
42	Sign Type D11b	SG5.03	10	EA	\$545.60	\$5,456.00
43	Sign Type D3 Sign Blanks	SG5.01	10	EA	\$189.20	\$1,892.00
44	Sign Type PG Preformed Thermoplastic Symbols using primary artwork	SG5.05	30	EA	\$600.60	\$18,018.00
45	Sign Type PI Destination Panels, Blank	SG5.06	20	EA	\$189.20	\$3,784.00
46	Sign Type PI Logo Panel with all artwork	SG5.07	20	EA	\$376.20	\$7,524.00
47	Sign Type Pib SMART Logo Panels with all artwork	SG5.07	10	EA	\$189.20	\$1,892.00
48	Sign Type PT-Topper, with Logo Artwork	SG5.08 and SG5.09	6	EA	\$268.40	\$1,610.40
49	Sign Type PT-Topper, blank	SG5.08 and SG5.09	6	EA	\$268.40	\$1,610.40
50	Sign Type PT Destination panel, painted with arrow applied and bracket hardware	SG5.08 and SG5.09	20	EA	\$435.60	\$8,712.00
51	Sign Type PT- Info Panel, Painted with no artwork	SG5.08 and SG5.09	4	EA	\$686.40	\$2,745.60
52	Sign Type R1-Panel with all Artwork	SG5.04	6	EA	\$268.40	\$1,610.40
53	Sign Type R2 -Panel with all Artwork	SG5.04	6	EA	\$268.40	\$1,610.40
54	Sign Type R3- Panel with all Artwork	SG5.04	2	EA	\$268.40	\$536.80

OPTIONAL ITEMS

The items included in Additive Alternate A (Table 2) may be optioned in by Change Order at the prices below at SMART’s discretion.

ADDITIVE ALTERNATE A						
TABLE 2						
Item #	Description	REFERENCE	QTY	UOM	Per Unit Price	Total Item Price
13	Installation at Larkspur to San Rafael Gap	SG4.04-SG4.06	1	LS	\$10,431.83	\$10,431.83
14	Installation at Lincoln Hill Pathway	Sg4.06-SG4.10	1	LS	\$12,628.00	\$12,628.00
15	Installation at Los Ranchitos	SG4.10-SG4.11	1	LS	\$2,196.17	\$2,196.17
16	Installation at Marin Civic Center	SG4.13	1	LS	\$549.04	\$549.04
17	Installation at Novato Hamilton Station Area	SG4.18	1	LS	\$549.04	\$549.04
18	Installation at Frosty Ln to Hannah Ranch Rd	SG4.19-SG4.20	1	LS	\$3,294.26	\$3,294.26
19	Installation at Vintage Oaks	SG4.21-SG4.22	1	LS	\$2,745.22	\$2,745.22
20	Installation at Rowland Way to Vintage to Novato Downtown	SG4.23-SG4.24	1	LS	\$4,392.35	\$4,392.35
21	Installation at Novato San Marin to Hwy 101 Underpass	SG4.28-SG4.35	1	LS	\$12,628.00	\$12,628.00
22	Installation at Hwy 101 underpass to Lakeville St.	SG4.35-SG4.45	1	LS	\$13,726.09	\$13,726.09
23	Sign Type PG	SG5.05	14	EA	\$506.00	\$7,084.00

BASE PROJECT ITEM DESCRIPTIONS

1. Item 1: Mobilization

Mobilization - Mobilization will be paid for at the contract LUMP SUM (LS) price, which price shall constitute full compensation for all such work. The scope of work for mobilization shall include, but not limited to, obtaining all bonds, insurance and permits, mobilization of crew and equipment to the site, and obtaining submittal approvals. Final payment for mobilization shall occur following demobilization and final cleanup when all required items per the Contract are fulfilled and the site is free of equipment and clean and ready for use by the public, all in accordance with the

requirements of the Contract Documents and no additional compensation will be made therefor.

2. Item 2: Sign Type D1

Sign Type D1-Decision Signs shall be paid for at the contract price per EACH (EA) D1 sign which shall include full compensation for furnishing all labor, materials, tools, and equipment for the fabrication of all the D1 sign panels included in “Groups 1, 2, and 3” in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

3. Item 3: Sign Type D11a

Sign Type D11a- Confirmation Signs for Off-Road shall be paid for at the contract price per EACH (EA) D11a sign which shall include full compensation for furnishing all labor, materials, tools, and equipment for the fabrication of all the D11a sign panels included in “Groups 1, 2, and 3” in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

4. Item 4: Sign Type D11b

Sign Type D11b- Confirmation Signs for On-Road shall be paid for at the contract price per EACH (EA) D11b sign which shall include full compensation for furnishing all labor, materials, tools, and equipment for the fabrication of all the D11b sign panels included in “Groups 1, 2, and 3” in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

5. Item 5: Sign Type D3

Sign Type D3- Street Signs shall be paid for at the contract price per EACH (EA) D3 sign which shall include full compensation for furnishing all labor, materials, tools, and equipment for the fabrication of all the D3 sign panels included in “Groups 1, 2, and 3” in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

6. Item 6: Sign Type PG

Sign Type PG- Pathway Ground Marking Thermoplastics shall be paid for at the contract price per EACH (EA) PG sign which shall include full compensation for furnishing for furnishing all labor, materials, tools, and equipment for the stencil placement including, but not limited to, thermoplastic, stencil, site preparation and placement associated materials for finishing in place the PG sign included in “Groups 1” in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

7. Item 7: Sign Type PI

Sign Type PI- Pathway ID Fence Mount Signs shall be paid for at the contract price per EACH (EA) PI sign which shall include full compensation for furnishing all labor,

materials, tools, and equipment for the fabrication of all the PI sign panels included in “Groups 1, 2, and 3” in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

8. Item 8: Sign Type PIb

Sign Type PIb- Pathway ID Pole Mount Signs shall be paid for at the contract price per EACH (EA) PIb sign which shall include full compensation for furnishing all labor, materials, tools, and equipment for the fabrication of all the PIb sign panels included in “Groups 1, 2, and 3” in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

9. Item 9: Sign Type PT

Sign Type PT- Pathway Trailhead Signs shall be paid for at the contract price per EACH (EA) PT sign which shall include full compensation for furnishing all labor, materials, tools, and equipment for the fabrication of all the PT sign panels included in “Groups 1, 2, and 3” in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

10. Item 10: Sign Type R2

Sign Type R2- Regulatory sign ("Yield to Pedestrians") shall be paid for at the contract price per EACH (EA) R2 sign which shall include full compensation for furnishing all labor, materials, tools, and equipment for the fabrication of all the R2 sign panels included in “Groups 1, 2, and 3” in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

11. Item 11: Sign Type R3

Sign Type R3- Regulatory Sign ("Uneven Surface Ahead") shall be paid for at the contract price per EACH (EA) R3 sign which shall include full compensation for furnishing all labor, materials, tools, and equipment for the fabrication of all the R3 sign panels included in “Groups 1, 2, and 3” in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

12. Item 12: Installation of Group 1 Signs

Group 1 Sign Installation will be paid for at the contract LUMP SUM (LS) price, which price shall constitute full compensation for all such work. The scope of work for installation shall include, but is not limited to, utility siting and marking, site clearing where necessary, relocation/removal of existing signs and sign posts, pouring the footings for required new posts and installation of all “Group 1” signs, including the specified mounting furnishings and hardware, all in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

ADDITIVE ALTERNATE A ITEM DESCRIPTIONS

13. Items 13 - 22: Installations for Locations Outside SMART's Right-of-Way

Group 2 Sign Panel Installation for locations outside SMART's right of way will be paid for at the contract LUMP SUM (LS) price per bid item, which price shall constitute full compensation for all such work. The scope of work for installation shall include, but is not limited to, utility siting and marking, site clearing where necessary, relocation/removal of existing signs and sign posts, pouring the footings for required new posts and installation of all "Group 2" signs, including the specified mounting furnishings and hardware, by location all in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

14. Item 23: Sign Type PG

Sign Type PG- Pathway Ground Marking Thermoplastics shall be paid for at the contract price per EACH (EA) PG sign which shall include full compensation for furnishing for furnishing all labor, materials, tools, and equipment for the stencil placement including, but not limited to, thermoplastic, stencil, site preparation and placement associated materials for finishing in place the PG sign included in "Groups 2" in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

ADDITIVE ALTERNATE B ITEM DESCRIPTIONS

15. Item 24-27: Installations for SMART Pathway Under Construction

Group 3 Sign Panel Installation for SMART Pathway under construction will be paid for at the contract LUMP SUM (LS) price per bid item, which price shall constitute full compensation for all such work. The scope of work for installation shall include, but is not limited to, utility siting and marking, site clearing where necessary, relocation/removal of existing signs and sign posts, pouring the footings for required new posts and installation of all "Group 3" signs, including the specified mounting furnishings and hardware, by location all in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

16. Item 28: Sign Type PG

Sign Type PG- Pathway Ground Marking Thermoplastics shall be paid for at the contract price per EACH (EA) PG sign which shall include full compensation for furnishing for furnishing all labor, materials, tools, and equipment for the stencil placement including, but not limited to, thermoplastic, stencil, site preparation and placement associated materials for finishing in place the PG sign included in "Groups 3" in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

ADDITIVE ALTERNATE C – NOT AWARDED

17. Items 29-37 – Not Awarded

ADDITIVE ALTERNATE D ITEM DESCRIPTIONS

18. Item 38-54: Attic Stock for Various Sign Type Elements

Attic Stock for Various Sign Type elements shall be paid for at the contract price per EACH (EA) sign which shall include full compensation for furnishing all labor, materials, tools, and equipment for the fabrication of all the attic stock sign panels and performed thermoplastic stencils in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

GENERAL INFORMATION

EA = Each

LS = Lump Sum

Costs are in United States Dollars

The above costs include all labor, supervision, equipment, materials, supplies, insurance, overhead, profit, and all other direct and indirect costs associated with performing the work included in this Agreement.

**EXHIBIT B
GRANT REQUIREMENTS**

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 Caltrans directives. The terms of the most recent amendment to any federal, state or local laws, regulations, Caltrans 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 Caltrans 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) Contractor and its subcontractors agree to comply with Title 2, Code of Federal Regulations (CFR), Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

(b) Contractor and its subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs and matching funds by line. The accounting system of the Contractor and all subcontractors shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers of Contractor and its subcontractors connected with Project performance under this Agreement shall be maintained for a minimum of three (3) years from the date of final payment to SMART and shall be held open to inspection, copying, and audit by representatives of SMART, Caltrans, the California State Auditor, and auditors representing the federal government. Copies thereof will be furnished by Contractor and its subcontractors upon receipt of any request made by SMART, Caltrans,

or its agents. In conducting an audit of the costs and match credits claimed under this Agreement, Caltrans will rely to the maximum extent possible on any prior audit of Contractor pursuant to the provisions of State and SMART law. In the absence of such an audit, any acceptable audit work performed by SMART's external and internal auditors may be relied upon and used by Caltrans when planning and conducting additional audits.

(c) For the purpose of determining compliance with applicable State law and SMART policy in connection with the performance of SMART's contracts with third parties pursuant to Government Code Section 8546.7, SMART, the Contractor, its subcontractors, and Caltrans, shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such materials available at their respective offices at all reasonable times during the entire Project period and for three (3) years from the date of final payment to SMART under this Agreement. Caltrans, the California State Auditor, or any duly authorized representative of Caltrans or the United States Department of Transportation, shall each have access to any books, records, and documents that are pertinent to a Project for audits, examinations, excerpts, and transactions, and Contractor and its subcontractors shall furnish copies thereof if requested.

(d) Contractor and its subcontractors will 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 Caltrans, for the purpose of any investigation to ascertain compliance with this Agreement.

(e) Contractor shall include all provisions of this article in all subcontracts entered into under this Agreement.

3. **ADA Access**

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

The contractor 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, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the Caltrans, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project or Services.

4. Civil Rights.

Applicability: All Contracts

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

Civil Rights and Equal Opportunity

The Sonoma-Marín Area Rail Transit District is an Equal Opportunity Employer. As such, SMART agrees to comply with all applicable Federal civil rights laws and implementing regulations. 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.** The Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.
2. Contractor and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code Sections 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code Sections 11135-11139.5), and the regulations or standards adopted by Caltrans to implement such article.

Contractor and its subcontractors shall permit access by representatives of the Department of Fair Employment and Housing and Caltrans upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Caltrans shall require to ascertain compliance with this clause.

Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all agreements and shall include a requirements in all agreements with all of same that each of them in turn include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts entered into under this Agreement.

5. Clean Air Act and Federal Water Pollution Control 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 and the Regional Office of the Environmental Protection Agency.

The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000.

6. Clean Water 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 (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to SMART and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

Clean Air Act

- a. 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 et seq.
- b. The contractor agrees to report each violation to SMART and understands and agrees that SMART will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The contractor agrees to include these requirements in each subcontract exceeding \$150,000.

Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to SMART and understands and agrees that SMART will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000.

7. **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.”

8. **Davis Bacon Act and Copeland Anti-Kickback Act**

Applicability: All Construction Contracts > \$2,000

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, the Contractor shall 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, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

9. **Debarment and Suspension**

Applicability: All Contracts > \$25,000

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an authorized official

irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- i. Debarred from participation in any federally assisted Award;
- ii. Suspended from participation in any federally assisted Award;
- iii. Proposed for debarment from participation in any federally assisted Award;
- iv. Declared ineligible to participate in any federally assisted Award;
- v. Voluntarily excluded from participation in any federally assisted Award; or
- vi. Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by SMART. If it is later determined by SMART that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to SMART, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

10. Disadvantaged Business Enterprise (DBE)

Applicability: All Contracts

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. 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:

- a. Withholding monthly progress payments;
- b. Assessing sanctions;
- c. Liquidated damages; and/or
- d. Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment SMART makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, the contractor shall utilize the specific DBEs listed unless the contractor obtains SMART's written consent; and that, unless SMART's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

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

Applicability: All Contracts

- a) SMART, Contractors, and Subcontractors are prohibited from obligating or expending loan or grant funds to:
 - 1) Procure or obtain;
 - 2) Extend or renew a contract to procure or obtain; or
 - 3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - (ii) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (iii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iv) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- c) See Public Law 115-232, section 889 for additional information.
- d) See also § 200.471.

12. Prompt Payment.

Applicability: All Contracts

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."

For the purposes of this section, a subcontractor's work is satisfactorily completed when the prime contractor certifies to SMART that all the tasks called for in the subcontract have been accomplished.

13. Restrictions on Lobbying

Applicability: All Contracts > \$100,000

Conditions on use of funds.

- (a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.
- (c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.
- (d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.
- (e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

Certification and disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

- (1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or
- (2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

- (1) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or
- (2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000, Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
- (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
- (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

- (1) A subcontract exceeding \$100,000 at any tier under a Federal contract;
- (2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;
- (3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,
- (4) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement, Shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

14. **Safe Operation of Motor Vehicles.**

Applicability: All Contracts

Seat Belt Use

The Contractor is encouraged to adopt and promote 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. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or SMART.

Distracted Driving

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 Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

15. **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 Updated February 2024 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.

16. **Solid Wastes (Recovered Materials).**

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.

17. **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.

18. Veterans Hiring Preference.

Applicability: All Construction Contracts

Veterans Employment - Construction contracts of Federal financial assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would 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.

19. Assumption of Risk and Indemnification Regarding Exposure to Environmental Health Hazards

In addition to, and not a limitation of, Contractor's indemnification obligations contained elsewhere in this Agreement, Contractor hereby assumes all risks of the consequences of exposure of Contractor's employees, agents, subcontractors, subcontractor's employees, and any other person, firm, or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, to any and all environmental health hazards, local and otherwise, in connection with the performance of this Agreement. Such hazards include, but are not limited to, bodily injury and/or death resulting in whole or in part from exposure to infectious agents and/or pathogens of any type, kind, or origin. Contractor also agrees to take all appropriate safety precautions to prevent any such exposure to Contractor's employees, agents, subcontractors, subcontractor's employees, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement. Contractor also agrees to indemnify and hold harmless Caltrans, the State of California, and each and all of their officers, agents, and employees, from any and all claims and/or losses accruing or resulting from such exposure. Except as provided by law, Contractor also agrees that the provisions of this paragraph shall apply regardless of the existence or degree of negligence or fault on the part of Caltrans, the State of California, and/or any of their officers, agents, and/or employees.

20. Mandatory Organic Waste Recycling

It is understood and agreed that pursuant to Public Resources Code Sections 42649.8 et seq., if Contractor generates two (2) cubic yards or more of organic waste or commercial solid waste per week, Contractor shall arrange for organic waste or commercial waste recycling services that separate/source organic waste for organic waste recycling.

Contractor shall provide proof of compliance, i.e.. organic waste recycling services or commercial waste recycling services that separate/source organic waste recycling, upon request from Caltrans District Partnership Liaison.

21. Metric System.

Applicability: All Contracts

To the extent required by Caltrans or the U.S. DOT, 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 Caltrans or the U.S. DOT. To the extent practicable and feasible, SMART agrees to accept products and services with dimensions expressed in the metric system of measurement.

22. 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.

23. 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.

24. Rights to Inventions Made Under a Contract or Agreement / Intellectual Property Provisions

Applicability: All Research and Development Contracts

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

Inventors are any idea, methodologies, design, concept, technique, invention, discovery, improvement or development regardless of patentability made solely by SMART, Contractor, and all subcontracts or jointly with SMART, Contractor, and all subcontractors during the term of this Agreement and in performance of any work under this Agreement, provided that either the conception or reduction to practice thereof occurs during the term of the Agreement and in performance of work issued under this Agreement.

Caltrans will have Government Purpose Rights to any inventions created as a result of the Project. “Government Purpose Rights” are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights, and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose any said invention. “Government Purpose Rights” also include the right to release or disclose said invention(s) outside Caltrans for any State government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the invention(s) for any State government purpose. “Government Purpose Rights” do not include any rights to use, modify, reproduce, perform, release, create derivative works from, or disclose the invention(s) for any commercial purpose.

If additional uses are reasonably determined to be needed by Caltrans for public outreach purposes, Contractor and SMART shall obtain rights and grant Caltrans and its agents said additional rights for use of the “Before” and “After” project photos, Artwork created or produced for Project under this Agreement, and educational programming created or produced for Project under this Agreement. The grant will be an irrevocable, non-exclusive, perpetual, royalty-free, sublicensable, unlimited, worldwide license.

If Contractor or Subcontractors become aware of any possible infringement regarding intellectual property rights in the course of performing any work under this Agreement, Contractor and subcontractors shall immediately notify SMART in writing.

25. 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.



INVITATION FOR BID

FOR

FURNISH & INSTALL

SYSTEM-WIDE PATHWAY WAYFINDING SIGNAGE

SOLICITATION NO. PL-BB-24-001

Sonoma-Marín Area Rail Transit District (SMART)
5401 Old Redwood Hwy., Ste. 200
Petaluma, CA 94954

Issue Date: May 22, 2024

Deadline for Bids: June 21, 2024 at 2:00pm (Pacific)

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The following Attachments and Forms are incorporated into this Invitation for Bid:

ATTACHMENTS

- Attachment A: Document 00 52 00 - Sample Agreement
- Attachment B: Document 00 70 00 – General Conditions
- Attachment C: General Requirements
- Attachment D: Phase 1 Placement Plan
- Attachment E: Sign Schedule
- Attachment F: Bid Forms

- FORM BF: Bid Form
- FORM QF: Questionnaire and Financial Statement
- FORM BB: Bidder's Bond
- Document 00 63 25: Substitution Request
- Document 00 61 13.16: Payment Bond
- Document 00 61 13.13: Performance Bond
- FORM EA: Escrow Agreement for Security Deposits in Lieu of Retention

1. NOTICE INVITING BIDS

Pursuant to Public Contracts Code Section 22000, the Sonoma-Marín Area Rail Transit District (hereinafter “SMART” or “District”) has elected to participate in the Uniform Construction Cost Accounting sealed Bidding procedures process.

NOTICE IS HEREBY GIVEN that SMART will receive sealed bids for the following project:

FURNISH & INSTALL SYSTEM-WIDE PATHWAY WAYFINDING SIGNAGE

Solicitation No. PL-BB-24-001

The Sealed Bids are subject to the terms, conditions, specifications, and provisions, set forth herein.

Bid Documents will be made available on SMART’s Procurement Portal located at <https://sonomamarintrain.bonfirehub.com> and can be downloaded at no cost.

1.1 Overview

The Sonoma-Marín Area Rail Transit District (SMART) is a Special District within the State of California that owns, maintains, and operates passenger rail service and a multi-use pathway in Sonoma County and Marin County.

SMART is seeking sealed bids from qualified, experienced, and licensed contractors to fabricate and install a new system-wide pathway wayfinding signage across SMART’s system. All signs have already been designed and issued for construction and fabrication.

This project and bid is divided into the following five (5) categories:

1. Base Bid – Bid Table 1

This category is the base project and includes fabrication of the signs identified in Group 1, Group 2, and Group 3. Installation of Group 1 signs at the designated locations.

2. Additive Alternate A – Bid Table 2

This category includes installation of Group 2 Signs. These signs are located outside of SMART's right-of-way and SMART is still in the process of obtaining final approvals from the jurisdictions.

3. Additive Alternate B – Bid Table 3

This category includes installation of Group 3 Signs. These signs are included in segments of pathway that are currently in construction.

4. Additive Alternate C – Bid Table 4

This category includes fabrication of Group 4 Signs. These signs are included in segments of pathway that are planned for future construction.

5. Additive Alternate D – Bid Table 5 - Attic Stock Fabrication

This category includes fabrication of Attic Stock Signs.

Lowest Responsive Bid Determination

SMART, at its sole discretion, may award the Base Bid and all Additive Alternate categories, the Base Bid and some of the Additive Alternate bid items (either individually or as a category), or just the Base Bid.

Should any of the additive bid items not be awarded at the time of contract execution, SMART may add these items into the contract via Change Order at the stated bid price.

The lowest responsive responsible bidder will be awarded the agreement. The lowest responsive bid will be determined by the "Total Bid Price" as indicated on the FORM BF – Bid Form, which is inclusive of all additive alternate bid items.

Engineer's Estimate

The engineer's estimate for this project, including all additive alternate categories is: \$1,150,000.

Funding

This project is funded by the State of California Clean California Local Grant and Local funds.

Roadworker Protection Training

Work will be performed within an active railroad right-of-way. Contractor's employees and subcontractor's employees who will be working onsite must complete the railroad operations and safety training before being permitted to work within the railroad right-of-way. The cost of the online training is approximately \$30.00 per person. SMART will provide a link to the training program upon execution of the contract.

DBE Participation

SMART is committed to ensuring full and open competition and equitable treatment of all potential proposers. SMART has established a Disadvantaged Business Enterprises (DBE) policy in accordance with 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all contracts and to create a level playing field on which DBE firms can compete fairly for contracts and subcontracts relating to SMART's contracting activities. Although this contracting opportunity does not have a contract-specific DBE goal, Bidders are strongly encouraged to obtain DBE participation.

SMART conducts its solicitation and procurement process electronically through a dedicated Procurement Portal located at <https://sonomamarintrain.bonfirehub.com>. Please be sure to register your company in order to obtain all bid documents, communicate with SMART, access addenda, receive notifications, and submit your proposal.

1.2 Completion Timeline

The State of California Clean California Local Grant requires that all work under the Base Bid for this agreement must be completed no later than November 30, 2024.

1.3 Minimum Contractor Requirements

The following are the minimum requirements a Bidder must meet in order to be considered:

- A. A valid Contractor State License Board ("CSLB") "A-General Engineering Contractor's License" or "C-45 "Sign Contractor" Contractor's License".
- B. Active Registration with the California Department of Industrial Relations ("DIR")

1.4 Prevailing Wage Requirements

This work is subject to compliance monitoring and enforcement by the Department of Industrial Relations. The successful Bidder must comply with all prevailing wage laws applicable to the scope of services and related requirements contained in the Agreement.

All Bidders and any Subcontractors listed, must be currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. SMART requires proof of current registration by Contractor and all listed Subcontractors as a condition to be awarded a contract, subject only to the allowances of Labor Code section 1771.1.

Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the county, or counties, in which the work is to be done have been determined by the Director of the California Department of Industrial Relations (“DIR”). Copies of the general prevailing wage rates and per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the Department of Industrial Relations, are located at <http://www.dir.ca.gov/DLSR/PWD/index.htm> and are deemed included in this Solicitation. The prevailing wage rates may also be reviewed at the District’s offices.

Contractor shall post the applicable prevailing wage rates at the Site, in addition to all other job site notices prescribed by regulation.

1.5 Department of Industrial Relations (“DIR”) Registration

In order to bid and perform public works on this project, all tiers of subcontractors, including trucking/hauling firms that are subcontracted to perform services, must be registered with the California Department of Industrial Relations (DIR), pursuant to Senate Bill 854, at the time bids are due and throughout the duration of the project. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the DIR pursuant to Labor Code Section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

1.6 California Air Resources Board (“CARB”) Requirements

The California Air Resources Board (“CARB”) implemented amendments to the In-Use Off-Road Diesel-Fueled Fleets Regulations (“Regulation”) which are effective on January 1, 2024 and apply broadly to all self-propelled off road diesel vehicles 25 horsepower or greater and other forms of

equipment used in California. A copy of the Regulation is available at <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/off-road-diesel/appa-1.pdf>. Bidders are required to comply with all CARB and Regulation requirements, including, without limitation, all applicable sections of the Regulation, as codified in Title 13 of the California Code of Regulations section 2449 et seq. throughout the duration of the Project. Bidders must provide, with their Bid, copies of Bidder's and all listed subcontractors' most recent, valid Certificate of Reported Compliance ("CRC") issued by CARB. Failure to provide valid CRCs as required herein may render the Bid non-responsive.

SMART is a Public Works Awarding Body, as defined under Title 13 California Code of Regulations section 2449(c)(46). Accordingly, Bidders must submit, with their Bids, valid Certificates of Reported Compliance ("CRC") for the Bidder's fleet and for the fleet(s) of its listed subcontractors (including any applicable leased equipment or vehicles). Bidder must additionally complete and submit the Fleet Compliance Certification, included in the Bid Documents. Failure to provide a CRC for the Bidder, and for all listed subcontractors, or failure to complete the Fleet Compliance Certification, may render the Bid non-responsive.

1.7 Bid Guaranty

Each bid must be accompanied by a Bid Guaranty in the form of a Certificate of Deposit, Certified or Cashier's Check, or Bid Bond, in an amount equal to at least ten percent (10%) of the Bidder's Grand Total Bid Price. The Bid Guaranty will be retained by the District and applied to any and all damages sustained by the District in the event that the successful Bidder fails or refuses to enter into the Contract awarded to it and to furnish all required bonds and Certificates of Insurance.

Bidder must submit their bid guaranty no later than the date and time of the bid deadline. The Bid Guaranty must be received at the following location prior to the bid deadline:

Sonoma-Marín Area Rail Transit District
Attn: Procurement Department
5401 Old Redwood Hwy, Suite 200
Petaluma, CA 94954
Solicitation # PL-BB-24-001
Furnish & Install System-Wide Wayfinding Signage
(Name and Address of Bidder)

Retaining of Bid Guaranty: SMART may retain the Bid Guaranty of other than the Apparent Low Bidder for a period of sixty (60) calendar days after the award or until full execution of the Contract, whichever first occurs. Upon full execution of the Contract, SMART shall return to the respective unsuccessful Bidders their Bid Guaranty.

1.8 Contract Bonds

A. General Information

All alterations, extension of time, extra and additional work, and other changes authorized by the Contract Documents may be made without securing the consent of the surety or sureties on the Contract Bonds.

B. Payment Bond (Required if Award is Greater than \$25,000)

Contractor shall be required to furnish a Payment Bond (Labor and Materials Bond) in an amount not less than 100 percent of the Contract price, excluding allowances. Payment bond shall be executed by an admitted surety insurer (California Civil Code Section 9554). An “admitted surety insurer” shall be defined as follows:

A corporate insurer or a reciprocal or interinsurance exchange to which the Insurance Commissioner has issued a certificate of authority to transact surety insurance in this state, as defined in Section 105 of the Insurance Code (California Code of Civil Procedures Section 995.120).

Bidder shall submit the Payment Bond on Document 00 61 13.16 “Payment Bond” or another form approved by SMART.

C. Performance Bond (Required if Award is Greater than \$25,000)

Contractor shall be required to furnish a Performance Bond in an amount not less than 100 percent of the Contract price, excluding allowances. Performance bond shall be executed by an admitted surety insurer (California Civil Code Section 9554). An “admitted surety insurer” shall be defined as follows:

A corporate insurer or a reciprocal or interinsurance exchange to which the Insurance Commissioner has issued a certificate of authority to transact surety insurance in this state, as defined in Section 105 of the Insurance Code (California Code of Civil Procedures Section 995.120).

Bidder shall submit the Performance Bond on Document 00 61 13.13 "Performance Bond" or another form approved by SMART.

1.9 Retention

Retention of each progress payment will be in effect in the amount of 5%.

Pursuant to Public Contract Code Section 22300, the successful Bidder may submit certain securities in lieu of SMART withholding retention of payments during the Project. Please reference FORM EA for the Escrow Agreement for Security Deposits in Lieu of Retention.

1.10 Insurance Requirements

SMART is an active railroad and the insurance requirements for this Agreement may require special railroad endorsements and/or railroad protective insurance. Please carefully review the requirements identified in the "Document 00 52 00 Sample Agreement". Contractor is required to obtain and maintain the insurance policies listed.

1.11 Equal Employment Opportunity

In connection with the performance of the resulting Agreement, Contractor shall be in full compliance with all applicable federal, state, and local laws, rules, and regulations in regard to Equal Employment, and more specifically, nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical conditions, disability, or any other reason.

Furthermore, Contractor shall be in full compliance with all applicable Federal, State, and Local safety and health standards, laws, and regulations.

1.12 Procurement Schedule

The Procurement Schedule is listed below and is subject to change at the sole discretion of the District.

<u>Date</u>	<u>Event</u>
May 22, 2024	Issue Invitation for Bid
May 30, 2024	Pre-Bid Meeting (Virtual), 10:00am (Pacific)
June 6, 2024	Deadline for Questions, 5:00 PM (Pacific)

June 10, 2024	Final Addendum Issued by SMART
June 21, 2024	Bids Due to SMART, 2:00 PM (Pacific)
June 21, 2024	Public Bid Opening, 2:30 PM (Pacific)
June 21, 2024	Notice of Apparent Low Bidder Issued
June 21, 2024 – June 28, 2024	Evaluation of Bids
June 28, 2024	Notice of Intent to Award Issued
July 17, 2024	Board of Director Review (As Required)
July 18, 2024	Award Agreement

1.13 Pre-Bid Meeting

SMART will host a virtual Pre-Bid Meeting at 10:00 AM on Thursday, May 30, 2024 via Zoom Teleconference.

Registration for the Pre-Bid Meeting is required in order to attend. Register at:

<https://sonomamarintrain-org.zoom.us/meeting/register/tZ0lc-6srT4tEtyplqxyLvnAp6pksSY95ELg>

Bidders are not required to attend the Pre-Bid Meeting as a condition to bidding. The Pre-Bid Meeting is expected to last approximately 1 hour.

1.14 Public Bid Opening Information

Public Bid Opening to take place at 2:30 p.m. (Pacific) at 5401 Old Redwood Hwy, First Floor, Petaluma, CA 94954 on the day of the bid deadline. Electronically sealed bids received will be read out loud and tabulated. *Attendance is NOT mandatory in order to win the award.*

Bid results will be made public and posted to SMART’s procurement portal following the opening. SMART’s procurement team will determine the Apparent Low Bidder at this public bid opening. Bids will not be made available for public inspection at the bid opening in order for the District to thoroughly review all submittals.

1.15 Bidder Questions and Clarification Requests

All questions, inquiries, requests for information, requests for clarification and other communications regarding the Invitation for Bids must be submitted using the District’s Procurement Portal located at <https://sonomamarintrain.bonfirehub.com> by clicking on the Vendor Discussions tab of the message section located on the project page.

The questions submitted should reference the exact section of the Invitation for Bid, Contract, or other document when submitting the request. Requests will only be reviewed if submitted by the date specified in the Procurement Schedule.

The District may, in its sole discretion, choose whether or not to respond to questions received. If the District chooses to respond, it may respond by a written Addendum to the Invitation for Bid Documents. Any response that the District may choose to make will not alter the Invitation for Bid unless it is incorporated into an Addendum. It is the Bidder's responsibility to check the District's Procurement Portal regularly for updates to the solicitation.

If a Bidder fails to notify SMART at least seven (7) days prior to the date for submission of Bids of a known error in the Invitation for Bid, or an error that reasonably should have been known, the Bidder shall submit a Bid at its own risk. SMART reserves the right not to consider requests for clarification. Any changes or modifications to the Invitation for Bid within the timeframe will be issued as an Addenda.

Rules of Contact

- a. Bidders shall only correspond or communicate with the District regarding this Invitation for Bid through the District's Procurement Portal Vendor Discussions tab;
- b. Bidders are prohibited from contacting SMART employees or officials regarding the Invitation for Bid, except through the process identified above;
- c. Bidders are prohibited from contacting or including the following stakeholders in their Proposal:

TDG Engineering, Inc. / Toole Design Group, LLC
- d. Bidders shall not contact any person serving on the evaluation regarding this Invitation for Bid;
- e. Any communications from the Bidders determined to be improper, at the sole discretion of the District, may result in disqualification of the Bidder;
- f. The District will not be bound by any oral exchange or any other information or exchange that occurs outside the official process specified herein;

1.16 Brand or Approved Equal Substitutions

- a. It is understood that specifying a brand name or specific types of components and/or equipment in these solicitation documents shall not relieve the bidder from its responsibility to furnish the end product in accordance with the warranty and contractual requirements. The bidder is responsible for notifying the District of any inappropriate brand names, or types of components and/or equipment that may be called for in these solicitation documents, and to propose a suitable substitute for consideration. If the phrase “or approved equal” is inadvertently omitted, it is implied after any brand name.
- b. Unless otherwise specifically provided in the solicitation documents, reference to any equipment, material, article or patented process by trade name, make, or catalog number shall be regarded as establishing a standard of quality and shall not be construed as limiting competition; and a bidder may, at its option, use any equipment, material, article, or process which, in the judgement of the District, is equal to that designated. To do so a bidder shall furnish, at its own expense, all test results, technical data, and background information required by the District in making the determination as to whether the proposed equipment, material or article or process, in the judgement of the District, is equal to that designated.
- c. The District shall be the sole judge as to the comparative quality and suitability of alternative equipment, articles, material or process, and its decision shall be final.
- d. Requests for Approved Equals must be in writing on SMART’s “Document 00 63 25 - Substitution Request Form” and submitted using the District’s Procurement Portal located at <https://sonomamarintrain.bonfirehub.com> by clicking on the Vendor Discussions tab of the message section located on the project page. Bidders must submit the request by the Deadline for Questions identified in the “Procurement Schedule”. After that date, SMART will not accept “or equal” substitution requests. To assess “or equal” acceptability of product or system, the Bidder shall provide all information and documentation required for SMART to be able to make a determination. Insufficient information will be grounds for rejection of substitution. SMART shall issue in writing its decision as to whether the proposed substitute item is an Equal item via the issuance of an Addendum.

1.17 Addenda

The District reserves the right to issue Addenda at any time during the period of the procurement. Any such Addenda will be bound into and included as part of the awarded Agreement, as appropriate. The District will post Addenda on the

project tab at <https://sonomamarintrain.bonfirehub.com>. It is the Bidder's responsibility to check the District's Procurement Portal regularly for updates to the solicitation. Bidders shall be responsible for providing copies of any Addenda to their Subcontractors.

Persons or firms that obtain the Invitation for Bid from sources other than the District bear the sole responsibility for obtaining, from such sources any Addenda issued by the District for the Invitation for Bid. The District will not be bound by any explanation, clarification, or interpretation, oral or written, regardless of who made it, that is not incorporated into the Invitation for Bid by an Addendum.

2. INSTRUCTIONS TO BIDDERS

2.1 Bid Submission Process

Bidders shall submit one electronic Bid. The Bid shall be uploaded at <https://sonomamarintrain.bonfirehub.com> within the project page for this solicitation by the bid deadline identified in the Procurement Schedule. **Hardcopy bids, bids submitted by email, and faxed bids will not be considered.** SMART is not responsible for submissions delayed for any reason. The online submission system will not allow for any submission to be accepted after the stated date and time.

Bids shall be prepared using the following format:

Part	Contents
A	Bid Form
B	Questionnaire and Financial Statement
C	Required Certificates and Forms

PART A. BID FORM

- a) FORM BF - SMART's Bid Form

PART B. QUESTIONNAIRE & FINANCIAL STATEMENT

- a) FORM QF - Questionnaire & Financial Statement

PART C. REQUIRED CERTIFICATES AND FORMS

- a) W-9 Tax Form or Equivalent
- b) Certificates of Reported Compliance ("CRC") for the Bidder's fleet and for

the fleet(s) of its listed subcontractors (including any applicable leased equipment or vehicles) and any other supporting documentation that is required by the Fleet Compliance Certification included in the FORM BF.

- a) Disadvantaged Business Enterprise (DBE) and/or Small Business Enterprise (SBE) certification document(s) –Required if you stated yes on SMART Bid Form (Form BF)

2.2 Conditions of Bid

By submitting a Bid, the Bidder is agreeing that it has undertaken all necessary due diligence and accepts all of the terms and conditions included in this Invitation for Bid and SMART's Sample Agreement.

2.3 Modifications to a Bid prior to Due Date

In the event a Bidder submits a Bid and needs to make revisions or withdraw their Bid prior to the Bid Deadline, instructions for doing so can be found here: <https://vendorsupport.gobonfire.com/hc/en-us/articles/6848514343447-Can-I-revise-my-submission>. Once the Submission Deadline has passed, revisions are not permitted.

2.4 Cost of Bidding

The Bidder shall bear all costs and expenses whatsoever for the preparation, submittal, discussions, interviews, and negotiations related to the Bid.

2.5 Bid Irregularities and Discrepancies

Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between written words and figures will be resolved in favor of the words.

Symbols such as commas and dollar signs will be ignored and have no mathematical significance in establishing any unit price or item total or lump sums. Written unit prices, item totals and lump sums will be interpreted according to the number of digits and, if applicable, decimal placement. Cents symbols also have no significance in establishing any unit price or item total since all figures are assumed to be expressed in United States dollars and/or decimal fractions of a dollar.

2.6 Multiple Bids

More than one Bid from a Bidder will not be considered.

2.7 Relief of Bidders

Pursuant to Public Contract Code sections 5100 to 5107, inclusive, concerning relief of bidders and in particular to the requirement therein, that if the bidder claims a mistake was made in the bid presented, the bidder shall give the District written notice within five (5) working days after the opening of the bid of alleged mistake, specifying in the notice detail how the mistake occurred.

2.8 General Bid Information

- A. Bids shall be submitted as described in the Invitation for Bid documents and shall be on the forms provided.
- B. All blank spaces in the Bid Forms must be completed as required.
- C. All price information shall be shown clearly legible, in figures, where required. No changes may be made on the Bid Forms.
- D. The successful bidder may be required to prepare a Schedule of Values based on the bid items on the Bid Form submitted to provide additional detail which will be used in conjunction with payment.

2.9 Warranty of Title

By submitting a bid, Bidder warrants to SMART that the title to the material, supplies or equipment covered by the Agreement or Purchase Order, when delivered to SMART is free from all liens and encumbrances.

2.10 Warranty of Fitness

By submitting a bid, Bidder warrants to SMART that all materials furnished meet the requirements and conditions required by SMART under this Solicitation; are fit for the purpose intended and fulfills its design functions; are free of all patent and latent defects in design, materials, and workmanship; and perform satisfactorily.

2.11 Non-Collusion Certification

By submitting a bid, the Bidder represents and warrants that such bid is genuine and not sham or collusive in the interest or in behalf of any person not therein named, and that the bidder has not, directly or indirectly, induced or solicited any other bidder to put in a sham bid, or any other person, firm, or corporation to refrain from bidding, and that the

bidder has not in any manner sought by collusion to secure to the bidder an advantage over any other bidder.

3. BID EVALUATION

Following the Public Bid Opening, SMART's procurement staff will review and evaluate the bids for responsiveness and responsibility prior to issuing the Notice of Intent to Award.

3.1 Responsiveness Evaluation

Responsiveness is determined by responding to all the mandatory bidding requirements.

The District reserves the right, in its sole discretion, to determine that a Bid is non-responsive based upon any of the following:

- a) The Bid is not properly signed by an authorized party.
- b) Failure to provide all required parts of the Bid.
- c) The Bid is illegible or contains omissions, erasure, alteration, or items not called for in the Invitation for Bid.
- d) The Bid contains unauthorized conditions or other irregularities of any kind, if the District determines that such conditions or irregularities make the Bid incomplete, indefinite, or ambiguous as to its meaning.
- e) Any alterations of forms, without prior approval of the District.
- f) Requested information deemed material by the District is not provided.
- g) Failure to acknowledge receipt of all Addenda.
- h) More than one Bid is received from a Bidder.
- i) The Evaluation Committee is not able to confirm the accuracy of all technical data, qualifications, or other information provided in the Bid.
- j) Due to an organizational conflict of interest, the Bidder has an unfair advantage, in the opinion of the District.
- k) Any other reason for which the District determines that the Bid is non-responsive.

3.2 Responsibility Evaluation

As a pre-requisite to an award of a Contract, the District will determine whether the low bidder meets the definition of a "responsible bidder" as set forth in Public Contract Code Section 1103: "a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the work."

Additionally, the District will ensure the bidder meets the definition of "responsible contractors" as stated in 49 U.S.C. 5325 and 2 CFR Part

200.318 (h).

In order to evaluate Bidder's ability to perform and provide the work to SMART's satisfaction, SMART may conduct reasonable investigations and reference checks of Bidder, proposed Subcontractors, suppliers and other persons and organizations as SMART deems necessary to assist in the evaluation of any Bid. Submission of a Bid constitutes Bidder's consent to the foregoing. SMART shall have the right to consider information provided by sources other than Bidder. SMART shall also have the right to communicate directly with the Bidder's surety regarding the Bidder's Bonds.

Additionally, the District may review any information about the bidder, including information submitted with FORM QF "Questionnaire & Financial Statement", evidence of good standing with the California Secretary of State, registration status with the System for Award Management ("SAM") at www.sam.gov, licensing agencies, regulatory agencies, and any other source deemed applicable by SMART.

Failure to so demonstrate responsibility may result in the rejection or disqualification of the low-bidder. In such event, the second lowest bidder may be issued a Notice of Award.

3.3 Single Bid Response

In the event of a single-bid response, SMART reserves the right to conduct a price and/or cost analysis of the bid to verify that the bid price is fair and reasonable. The Bidder will be expected to cooperate in this process and to submit cost and pricing data to verify that the bid price is fair and reasonable. The right of examination will extend to all documents necessary to permit adequate evaluation of the cost of the product(s) and the prices quoted. Failure to submit the data as requested by SMART may result in the Bidder being declared non-responsive.

4. AWARD

4.1 No Obligation to Award

The District shall be under no obligation to award an Agreement should the District decide, in its sole discretion, that it is in its best interests not to award the Agreement. At its discretion, the District may cancel the procurement in its entirety, and re-procure by any method at a later date.

4.2 Award

The District intends to award the Agreement to the lowest responsive responsible bidder whose bid complies with the specifications in a manner satisfactory to SMART's best interests, as determined by SMART.

Except as permitted by applicable law, no Bidder may withdraw its bid for a period of ninety (90) calendar days after the date of bid opening. Each Bidder will be notified of any award of the Contract by the District.

4.3 Execution of Contract

The successful Bidder shall execute and submit the following documents to SMART within five (5) Business Days following the issuance of the Notice of Award:

- a. Agreement
- b. Insurance Certificates and Required Endorsements
- c. Contract Bonds (Payment Bond, Performance Bond, etc.)

4.4 Failure to Execute Contract

Failure of the winning bidder to promptly and properly execute the Contract or furnish acceptable Contract bonds, or certificates of insurance, shall be just cause for the cancellation of the award, the forfeiture of such bidder's Bid Guaranty (If Required), and debarment from bidding on future SMART opportunities.

4.5 Notice to Proceed

After the execution of the Contract and submission of the required Contractor's Bonds and Certificates of Insurance, SMART will issue a Notice to Proceed, Limited Notice to Proceed, or multiple Notices to Proceed with respect to specific tasks, indicating the Work may commence on the date indicated.

4.6 Release of Information

Awardee must receive prior permission from SMART before releasing any reports, information or promotional materials prepared in connection with this Invitation for Bid and subsequent contract award. The Awardee shall not use the District's logo or any other proprietary material without the prior written permission of the District. The awardee shall provide a copy or copies of any such material to SMART for first review.

5. PROTEST PROCEDURES

The Sonoma-Marin Area Rail Transit District (SMART) maintains written procurement protest procedures that must be followed for all protests. SMART's Procurement Protest Procedures may be downloaded at <https://sonomamarintrain.org/business>. Copies of these protest procedures are also available at SMART's Headquarters Office located at 5401 Old Redwood Hwy, Suite 200, Petaluma, CA 94954. Failure to comply with the rules and procedures specified in SMART's Procurement Protest Procedures will render a protest untimely and/or inadequate and shall result in its rejection.

6. LEGAL, CONTRACTUAL, AND FINANCIAL INFORMATION

6.1 Bid and Accompanying Documents

Signing of Bid: The Bid shall be signed by all parties making up the Bidder. If the Bidder is a corporation, the Bidder shall be signed by an authorized officer of the corporation; if the Bidder is a partnership, the Bidder shall be signed by a general partner having the power to bind the partnership contractually; if the Bidder is a Joint Venture, the Bidder shall be signed by all equity members of the Joint Venture; or if the Bidder is signed by an attorney in fact for a corporation or partnership, a power of attorney shall be submitted with the Bid. A Bid not properly signed may be rejected as irregular and unauthorized.

6.2 Diversity Program

The District, a recipient of federal financial assistance from the Federal Transit Administration (FTA), the Federal Highway Administration (FHWA), and the Federal Railroad Administration (FRA), is committed to and has adopted a Diversity Program in accordance with Federal Regulation 49 C.F.R. Part 26, issued by the U.S. Department of Transportation (U.S. DOT).

It is the policy of the District to ensure nondiscrimination in the award and administration of all contracts and to create a level playing field on which Disadvantaged Business Enterprises (DBEs) can compete fairly for contracts and subcontracts relating to the District's construction, procurement and professional services activities. To this end, the District has developed procedures to remove barriers to DBE participation in the bidding and award process and to assist DBEs to develop and compete successfully outside the Diversity Program. Bidders will cooperate with the

District in meeting these commitments and objectives in connection with this Solicitation.

Pursuant to 49 C.F.R. §26.13 and as a material term of any agreement with the District, the awarded bidder will be required to make the following assurance and agree to include this assurance in any agreements it makes with subcontractors in the performance of a contract awarded in connection with this Solicitation:

The Contractor/Consultant will not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor/Consultant will carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S. DOT-assisted contracts. Further, the Contractor/Consultant agrees to comply with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. The Contractor/Consultant will obtain the same assurances from its joint venture partners, subcontractors, and subconsultants by including this assurance in all subcontracts entered into under this Contract. Failure by the Contractor/Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract.

By submitting a bid, the bidder is deemed to have made the foregoing assurance and agrees to be bound by its terms.

6.3 Conflict of Interest

Depending on the nature of the equipment or product being furnished, Vendors and Subcontractors are subject to the same conflict of interest prohibitions that apply to District employees. These include, but are not limited to, the requirements of California Law (including Government Code Sections 1090 et seq., and 87100 et seq., and Title 2, Division 6 of the California Code of Regulations). The District reserves the right to disqualify any Bidder under the Invitation for Bid if the District, in its sole discretion, deems that the potential conflicts of interest is likely to impair or restrict the Bidder's ability to furnish services contemplated within the Agreement.

At the time of submitting a Bid, Bidders shall disclose to SMART any and all potential organizational conflicts of interest. SMART will evaluate potential conflicts on a case-by-case basis. By responding to this Bid, Bidder agrees to facilitate SMART's efforts to share information, and agrees to comply with any other measures required by SMART to mitigate or eliminate conflicts of interest.

6.4 Economic Sanctions

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. As a recipient of state and federal funds, the District is prohibited from contracting with individuals or entities that are determined to be a target of Economic Sanctions. By submitting a bid, Bidder represents that it is not a target of Economic Sanctions. Should the District determine Bidder is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for rejection of the Bid any time prior to contract execution, or if determined after contract execution, shall be grounds for termination by the District.

6.5 Confidentiality

The issue of confidentiality will be stressed during the entire evaluation and selection process. The District recognizes that the integrity of any contracting process is critical to the fairness and the confidence that Bidders and the public have in a public agency. Therefore, to the extent consistent with the requirements of applicable law, the deliberations of the evaluation committee will be held in the strictest confidence, and all information provided by Bidders or generated by the evaluation will be safeguarded until the Notice of Intent to Award has been issued.

6.6 Public Disclosure

The California Public Records Act (CPRA) (Government Code Sections 7920.000, et seq.) mandates public access to public records not exempt from disclosure under the CPRA. All written correspondence, exhibits, photographs, reports, printed material photographs, tapes, electronic disks, and other graphic and visual aids submitted to the District during this procurement process, including as part of the response to this Solicitation, are, upon their receipt by District, the property of the District and are subject to the California Public Records Act (Chapter 1, commencing with section 7920.000, of Division 10 of Title 1 of the Government Code) (the "Act"). None of the aforementioned materials will

be returned to the submitting parties. Respondents should familiarize themselves with the provisions of the Act.

By submitting a bid, a bidder (i) consents to the release of its bid, in the form submitted to SMART and without any redactions, and (ii) waives all claims against SMART, its directors, officers, employees, and agents, for the disclosure of all or a portion of a Bid submitted under this Invitation for Bid. In no event shall District, or any of its agents, representatives, Contractors, directors, officers, or employees be liable to any Bidder for the disclosure of all or a portion of a Bid submitted under this Solicitation.

7. EXISTING SITE CONDITIONS

This section applies to all supplied existing conditions information and all other information supplied regarding existing conditions either above ground or below ground. This section also sets forth the terms and conditions under which Bidder may review, study, use, or rely upon existing conditions information, including geotechnical data if applicable, concerning existing conditions at or contiguous to the Site. This section, the available geotechnical data, and the supplied existing conditions information are not considered Contract Documents.

7.1 General Information

Bidders may examine any available existing conditions information (e.g., record documents, specifications, studies, drawings of previous work, geotechnical data) by giving SMART reasonable advance notice.

7.2 Reports and Information

- A. Existence of Reports. SMART, its consultants, and prior contractors may have collected documents providing a general description of the Site and conditions of the Work. These documents may consist of geotechnical reports for and around the Site, contracts, contract specifications, tenant improvement contracts, as-built drawings, utility drawings, and information regarding Underground Facilities. These reports, documents and other information are not part of the Contract Documents.
- B. Inspection of Reports. Bidders may inspect reports and information regarding existing conditions, if available, at SMART's main office, and may obtain copies upon Bidder's payment for the costs of reproduction and handling. These reports, documents and other information, are not part of the Contract Documents. Nevertheless, by submitting a Bid, Bidder accepts full responsibility for reviewing, knowing and

understanding the contents of all of these materials.

- C. Inclusion in Project Manual. Geotechnical reports and information regarding existing conditions may also be included in the Project Manual, if available, but neither shall be considered part of the Contract Documents.

7.3 Use of Information on Existing Conditions

- A. Aboveground Existing Conditions. Under no circumstances shall SMART be deemed to make a warranty or representation of existing aboveground conditions, as-built conditions, or other aboveground actual conditions verifiable by reasonable independent investigation. These conditions are verifiable by Bidder by the performance of its own independent investigation that Bidder must perform prior to bidding and Bidder must not rely on the information supplied by SMART regarding existing conditions. Bidder represents and agrees that in submitting its Bid, it is not relying on any information regarding existing conditions supplied by SMART.
- B. Underground Facilities. Information supplied regarding existing Underground Facilities at or contiguous to the Site is based on information furnished to SMART by others (e.g., the builders of such Underground Facilities or others). Except as expressly identified within the Invitation for Bid Documents, SMART does not assume responsibility for the accuracy, completeness or thoroughness of this information, and Bidder is solely responsible for any interpretation or conclusion drawn from this information. Except as expressly identified within the Invitation for Bid Documents, SMART will be responsible only for the general accuracy of information regarding its own Underground Facilities. This express assumption of responsibility applies only if Bidder has conducted the independent investigation required of it and discrepancies were not apparent.

7.4 Limited Reliance Permitted on Certain Information

- A. Geotechnical Data. Except as expressly identified within the Invitation for Bid Documents, SMART does not warrant, and makes no representation regarding, the accuracy or thoroughness of any geotechnical data. Bidder represents and agrees that in submitting its Bid, it is not relying on any geotechnical data supplied by SMART, except as specifically set forth herein.
- B. Technical Data. Bidder may rely upon the general accuracy of the “technical data” contained in the geotechnical reports and existing conditions information identified above, but only insofar as it relates to

subsurface conditions, provided Bidder has conducted the independent investigation required of it and discrepancies were not apparent. The term “technical data” in the referenced reports and drawings shall be limited as follows:

- 1) The term “technical data” shall include actual reported depths, reported quantities, reported soil types, reported soil conditions, and reported material, equipment, or structures that were encountered during subsurface exploration.
- 2) The term “technical data” does not include, and Bidder may not rely upon, any other data, interpretations, opinions or information shown or indicated in such drawings or reports that otherwise relate to subsurface conditions or described structures.
- 3) The term “technical data” shall not include the location of Underground Facilities.
- 4) Bidder may not rely on the completeness of reports and drawings for the purposes of bidding or construction. Bidder may rely upon the general accuracy of the “technical data” contained in such reports or drawings.
- 5) Bidder is solely responsible for any interpretation or conclusion drawn from any “technical data” or any other data, interpretations, opinions, or information contained in supplied existing conditions information.

7.5 Investigations

- A. Before submitting a Bid, each Bidder shall be responsible to obtain such additional or supplementary examinations, investigations, explorations, studies and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site or otherwise, which may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto or which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price and other terms and conditions of Contract Documents.
- B. SMART has provided time in the period prior to bidding for Bidder to ask questions.

- C. Notwithstanding the foregoing, Potential contaminates may be encountered along the SMART right-of-way during Contract work that were not included in the contract documents. If hazardous materials are encountered, the Contractor shall immediately notify SMART and determine the limits of the hazardous materials. SMART will retain the risk for costs that arise due to the discovery of unanticipated hazardous materials during the performance of the work. SMART shall have no responsibility or liability for any hazardous materials generated by the Contractor or its subcontractors. The Contractor shall be responsible to arrange the necessary resources to be able to remove and dispose of such materials in a timely manner and in accordance with all applicable requirements.

8. DISTRICT'S RESERVATION OF RIGHTS

In connection with this procurement, the District reserves to itself all rights (which rights shall be exercisable by the District in its sole discretion) available to it under the Public Contract Code and applicable law, including without limitation, the following, with or without cause and with or without notice:

- a) Reject any or all Bids, or information submitted related to a Bid;
- b) Issue a new Invitation for Bid, or modify dates set or projected in the Invitation for Bid;
- c) Cancel, modify, or withdraw the Invitation for Bid, in whole or in part at any time prior to the execution of the Agreement without incurring any cost obligations or liabilities;
- d) Issue Addenda, supplements and modifications to the Invitation for Bid;
- e) Modify the Invitation for Bid process;
- f) Appoint an Evaluation Committee to review Bids and to consider the advice and assistance of non-District experts in any subject matter in Bid evaluation;
- g) Hold meetings and conduct discussions and correspondence with a Bidder to seek an improved understanding and evaluation of the Bid;
- h) Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the Bid;
- i) Waive weaknesses, informalities, and minor irregularities in Bids;

- j) Disqualify any Bidder that changes its organization (as represented in its Bid) without District written approval;
- k) Hold the price of bids under consideration for up to 90 calendar days after the bid deadline until the Award is made unless there is a mutual agreement to extend the 90-day time limit as provided in the Invitation for Bid;
- l) Disclose information contained in the Bids to the public as described herein;
- m) Refuse to consider a Bid, once submitted, or reject a Bid if such refusal or rejection is based upon, but not limited to, the following;
- n) Failure on the part of a Principal Participant to pay, satisfactorily settle, or provide security for the payment of claims for labor, equipment, material, supplies, or services legally due on previous or ongoing contracts;
- o) More than one bid submitted by the same bidder for the same work under the Bidder's own name or under a different name;
- p) Evidence of collusion between a prospective Bidder (or any Principal Participant or Designer) and other Bidders (or Principal Participants or Designers);
- q) Further negotiate pricing, or terms and conditions, in advance of issuing an Agreement (If Allowable);
- r) Exercise any other right reserved or afforded to the District under this Invitation for Bid or under the Public Contract Code and applicable law; and/or
- s) SMART may require the apparent low bidder to submit cost data in sufficient detail to permit analysis of the cost elements that comprise the bid prices. In such instances, the apparent low bid may, at the discretion of SMART, be subject to audit.
- t) The Bidder acknowledges that, by submitting a Bid in response to this Invitation for Bid, it agrees with these disclaimers and waives any right to legally challenge or protest any District's actions that exercise these disclaimers.



SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

ATTACHMENT B

00 70 00

GENERAL CONDITIONS

**FURNISH AND INSTALL
SYSTEM-WIDE PATHWAY WAYFINDING SIGNAGE**

CONTRACT NO. PL-BB-24-001

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1 INTERPRETATION OF CONTRACT

1.1 Defined Terms

All abbreviations and definitions of terms used and not otherwise defined in this Document 00 70 00 are set forth in Section 01 42 19 (References Standards). This Document 00 70 00 subdivides at first level into Articles, and then into paragraphs.

1.2 Contract Documents

- 1.2.A Contract Documents are complementary; what is called for by one is as binding as if called for by all. Contract Documents shall not be construed to create a contractual relationship of any kind between (i) Architect, Engineer or any SMART's Representative and Contractor; (ii) SMART and/or its representatives and a Subcontractor, sub-Subcontractor, or supplier of any Project labor, materials, or equipment; or (iii) between any persons or entities other than SMART and Contractor.

1.3 Precedence Of Documents

- 1.3.A In the case of discrepancy or ambiguity in the Contract Documents, the following order of precedence shall prevail:
- 1.3.A.1 Modifications in inverse chronological order (i.e., most recent first), and in the same order as specific portions they are modifying;
 - 1.3.A.2 Document 00 52 00 (Agreement), and terms and conditions referenced therein;
 - 1.3.A.3 Supplementary Conditions;
 - 1.3.A.4 General Conditions);
 - 1.3.A.5 Division 1 Specifications;
 - 1.3.A.6 Drawings and Division 2 through 17 Specifications;
 - 1.3.A.7 Written numbers over figures, unless obviously incorrect (i.e. [six] over [6]);
 - 1.3.A.8 Figured dimensions over scaled dimensions;
 - 1.3.A.9 Large-scale Drawings over small-scale Drawings.
- 1.3.B Any conflict between Drawings and Division 2 through 17 Specifications will be resolved in favor of the document of the latest date (i.e., the most recent document), and if the dates are the same or not determinable, then in favor of Specifications.
- 1.3.C Any conflict between a bill or list of materials shown in the Contract Documents and the actual quantities required to complete Work required by Contract Documents, will be resolved in favor of the actual quantities.

2 BID PERIOD INVESTIGATIONS AND SUBCONTRACTING

2.1 Investigation Prior To Bidding

- 2.1.A Prior to bidding, Contractor must investigate fully the Work of the Contract. Contractor must visit the Site, examine thoroughly, and understand fully the nature and extent of the Contract Documents, Work, Site, locality, actual conditions and as-built conditions, and all other information made available for

bidding. Contractor's investigation shall include, but is not limited to, a thorough examination of all reports of exploration and tests of subsurface conditions, as-built drawings, drawings, product specification(s) or reports, available for Bidding purposes, of physical conditions, including Underground Facilities and information identified in the bidding documents and/or Hazardous Materials Surveys (if used), or which may appear in the Contract Documents, and all local conditions, and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto. Contractor shall completely and thoroughly correlate all such information and consider such information fully, prior to and as a condition of submitting its Bid. Contractor shall make inquiry as required in the bidding documents.

- 2.1.B Prior to submitting its Bid, Contractor shall take care to note the existence and potential existence of Underground Facilities, in particular, above and below grade structures, drainage lines, storm drains, sewers, water, gas, electrical, chemical, hot water, and other similar items and utilities. Contractor shall carefully consider all supplied information, request additional information Contractor may deem necessary, and visually inspect the Site for above ground indications of Underground Facilities (such as, for example not by way of limitation, the existence of existing service laterals, appurtenances or other types of utilities, indicated by the presence of an underground transmission main or other visible facilities, such as buildings, new asphalt, meters and junction boxes, on or adjacent to the Site).
- 2.1.C Prior to submitting its Bid, Contractor must correlate its experience, knowledge, and the results of its required investigation with the terms and conditions of the Contract Documents and must give SMART prompt written notice of all conflicts, errors, ambiguities, or discrepancies of any type, that it may discover in or among the Contract Documents, as-built drawings (if any) and/or actual conditions. Contractor shall give this notice during the Bid period and submission of a Bid indicates Contractor's agreement that SMART responded to the notice through Addenda issued by SMART which is acceptable to Contractor.
- 2.1.D Prior to submitting its Bid, Contractor must consider fully the fact that information supplied regarding existing Underground Facilities at or contiguous to the Site is in many cases based on information furnished to SMART by others (e.g., the builders of such Underground Facilities or others), and that due to their age or their chain of custody since preparation, may not meet current industry standards for accuracy. Contractor must also consider local underground conditions and typical practices for Underground Facilities, either through its own direct knowledge or through its subcontractors, and fully consider this knowledge in assessing the existing information and the reasonableness of its reliance.

- 2.1.E Prior to submitting its Bid, as required, Contractor shall conduct (or request that SMART have conducted) any such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site or otherwise, which may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto or which Contractor deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price and other terms and conditions of Contract Documents.
- 2.1.F Prior to submitting its Bid, Contractor may rely on SMART supplied information regarding existing conditions only where such conditions are underground and not subject to reasonable verification. If existing information supplied by SMART indicates a discrepancy or a substantial risk of inaccuracy or omission, then Contractor must request specific additional information.
- 2.1.G Contractor shall advise SMART in writing during the Bid period of any questions, suppositions, inferences, or deductions Contractor may have, for SMART's review and response by Addenda, and may not assert any such matters later that were not brought forth during the Bid period.
- 2.1.H During performance of the Contract, Contractor will be charged with knowledge of all information that it should have learned in performing this required pre-Bid investigation and shall not be entitled to change orders (time or compensation) due to information or conditions that Contractor should have known as a part of this pre-Bid investigation.

2.2 Supplied Information on Underground Existing Conditions

- 2.2.A Regarding Underground Facilities shown in the Contract Documents or supplied in the bidding documents, SMART has compiled this information in good faith, relying on its records and third-party records. Because of the nature and location of SMART and the Project, the existence of Underground Facilities is deemed inherent in the Work of the Contract, as is the fact that Underground Facilities are not always accurately shown or completely shown on as-built records, both as to their depth and location. In Article 14 of this Document 00 70 00, this Contract establishes a heightened standard for claims involving Underground Facilities. Contractor shall consider this fact in its bidding and in its planning and execution of the Work involving Underground Facilities.
- 2.2.B Regarding subsurface conditions other than Underground Facilities, shown on the Contract Documents or supplied in the bidding documents, Contractor may rely only upon the general accuracy of actual reported depths, actual reported character of materials, actual reported soil types, actual reported water conditions, or actual obstructions shown or indicated in the Contract Documents. SMART is not responsible for the completeness of any subsurface condition information for bidding or construction, Contractor's conclusions or opinions drawn from any subsurface condition information, or subsurface

conditions that are not specifically shown. (For example, SMART is not responsible for soil conditions in areas contiguous to areas where a subsurface condition is shown.)

2.3 Supplied Information on Above-Ground Existing Conditions

- 2.3.A Regarding aboveground and as-built conditions shown on the Contract Documents or supplied in the bidding documents, such information has been compiled in good faith, however, Contractor must independently verify such information. SMART does not expressly or impliedly warrant or represent that information as to aboveground conditions or as-built conditions indicated, is correctly shown or indicated, or otherwise complete for construction purposes.
- 2.3.B As a condition to bidding, Contractor shall verify by independent investigation all such aboveground and as-built conditions and bring any discrepancies to SMART's attention through written question. In submitting its Bid, Contractor shall rely on the results of its own independent investigation and shall not rely on SMART-supplied information regarding aboveground conditions and as-built conditions, and Contractor shall accept full responsibility for its verification work sufficient to complete the Work as intended.

2.4 Subcontractors

- 2.4.A Consistent with Public Contract Code Sections 4101 et seq., Contractor shall not substitute any other person or firm in place of any Subcontractor listed in the Bid. Subcontractors shall not assign or transfer their subcontracts or permit them to be performed by any other contractor without SMART's written approval. At SMART's request, Contractor shall provide SMART with a complete copy of all executed subcontracts or final commercial agreements with Subcontractors and/or suppliers.
- 2.4.B Subcontract agreements shall preserve and protect the rights of SMART under the Contract Documents so that subcontracting will not prejudice such rights. To the extent of the Work to be performed by a Subcontractor, Contractor shall require the Subcontractor's written agreement (1) to be bound to the terms of Contract Documents and (2) to assume vis-à-vis Contractor all the obligations and responsibilities that Contractor assumes toward SMART under the Contract Documents. (These agreements include for example, and not by way of limitation, all warranties, claims procedures and rules governing submittals of all types to which Contractor is subject under the Contract Documents.)
- 2.4.C Contractor shall provide for the assignment to SMART of all rights any Subcontractor may have against any manufacturer, supplier, or distributor for breach of warranties and guarantees relating to the Work performed by the Subcontractor under the Contract Documents.
- 2.4.D SMART shall be deemed to be an intended third-party beneficiary of all Subcontracts (of any tier) for the provision of labor, services, supplies or material to the Project, and each such agreement shall so provide.

3 CONTRACT AWARD AND COMMENCEMENT OF THE WORK

3.1 Time Allowances for Performance of Contract Documents

- 3.1.A SMART will make the Award of Contract by issuing a Notice of Award. As a condition to SMART signing Document 00 52 00 (Agreement), however, Contractor shall deliver to SMART the executed agreements, forms, bonds, and insurance documents required by the bidding documents in the required quantities and within the required times.
- 3.1.B The Contract Time will commence to run on the date indicated in the Notice to Proceed (Commencement Date). The Notice to Proceed will be specified as NTP.
- 3.1.C The total number of Days for completion of the Work shall be as described in the bid solicitation documents.
- 3.1.D Contract Time commences on the date established in Notice to Proceed. SMART reserves the right to modify or alter the Commencement Date of the Work. SMART may give a Notice to Proceed at any time within 60 Days after the Notice of Award. Contractor shall not do any Work at the Site prior to the date on which the Contract Time commences to run.

3.2 Commencement Of Work

- 3.2.A Contractor shall commence work on the Site on the Commencement Date issued in NTP. Contractor shall not do any Work at the Site prior to that date.

4 INDEMNIFICATION

4.1 Indemnification

- 4.1.A SMART and each of its officers, employees, consultants and agents including, but not limited to the Board, Architect, Engineer and each SMART's Representative, shall not be liable or accountable in any manner for loss or damage that may happen to any part of the Work; loss or damage to materials or other things used or employed in performing the Work; injury, sickness, disease, or death of any person; or damage to property resulting from any cause whatsoever except their sole negligence, willful misconduct or active negligence, attributable to performance or character of the Work, and Contractor releases all of the foregoing persons and entities from any and all such claims.
- 4.1.B To the furthest extent permitted by law (including without limitation California Civil Code Section 2782), Contractor shall assume defense of, and indemnify and hold harmless, SMART and each of its officers, employees, consultants and agents, including but not limited to the Board, Architect, Engineer and each SMART's Representative, from claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to claims and fines of regulatory agencies and attorney's fees and consultant's fees, directly or indirectly arising out of, connected with or resulting from performance of the Work, failure to perform the Work, or condition of the Work which is caused in whole or part by any act or omission of Contractor, Subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of

them may be liable, regardless of whether it is caused in part by the negligence of SMART or by any person or entity required to be indemnified hereunder.

- 4.1.C With respect to third-party claims against Contractor, Contractor waives any and all rights to any type of express or implied indemnity against SMART and each of its officers, employees, consultants, and agents including, but not limited to SMART, the Board, Architect, Engineer and each SMART's Representative.
- 4.1.D Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its Subcontractors of any tier, or the officers or agents of any of them.
- 4.1.E To the furthest extent permitted by law (including, without limitation, Civil Code Section 2782), the indemnities, releases of liability and limitations of liability, claims procedures, and limitations of remedy expressed throughout Contract Documents shall apply even in the event of breach of Contract, negligence (active or passive), fault or strict liability of the party(ies) indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, abandonment, or completion of the Work or the terms of the Contract Documents. If Contractor fails to perform any of these defense or indemnity obligations, SMART may in its discretion back charge Contractor for SMART's costs and damages resulting therefrom and withhold such sums from progress payments or other Contract moneys which may become due.
- 4.1.F The indemnities in the Contract Documents shall not apply to any indemnified party to the extent of its sole negligence or willful misconduct; nor shall they apply to SMART or other indemnified party to the extent of its active negligence.
- 4.1.G Contractor's obligations under this paragraph 4.1 shall survive completion of the Work or termination of the Contract Documents for any reason whatsoever.

5 DRAWINGS AND SPECIFICATIONS

5.1 Intent

- 5.1.A Drawings and Specifications are intended to describe a functionally complete and operable Project (and all parts thereof) to be constructed in accordance with the requirements of Contract Documents. Contractor shall perform any work, provide services and furnish any materials or equipment that may reasonably be inferred from the requirements of Contract Documents or from prevailing custom or trade usage as being required to produce this intended result. Contractor shall interpret words or phrases used to describe Work (including services), materials, or equipment that have well-known technical or construction industry or trade meaning in accordance with that meaning. Drawings' intent specifically includes the intent to depict construction that complies with all applicable laws, codes, and standards.
- 5.1.B As part of the "Work," Contractor shall provide all labor, materials, equipment, machinery, tools, facilities, services, employee training and testing, hoisting facilities, Shop Drawings, storage, testing, security, transportation, disposal, the securing of all necessary or required field dimensions, the cutting or patching of existing materials, notices, permits, documents, reports, agreements and any

other items required or necessary to timely and fully complete Work described and the results intended by Contract Documents and, in particular, Drawings and Specifications. Divisions and Specification Sections and the identification on any Drawings shall not control Contractor in dividing Work among Subcontractors or suppliers or delineating the Work to be performed by any specific trade.

- 5.1.C Contractor shall perform reasonably implied parts of Work as “incidental work” although absent from Drawings and Specifications. Incidental work includes any work not shown on Drawings or described in Specifications that is necessary or normally or customarily required as a part of the Work shown on Drawings or described in Specifications. Incidental work includes any work necessary or required to make each installation satisfactory, legally operable, functional, and consistent with the intent of Drawings and Specifications or the requirements of Contract Documents including required tasks to be performed under Division 1 of Specifications. Contractor shall perform incidental work without extra cost to SMART. Incidental work shall be treated as if fully described in Specifications and shown on Drawings, and the expense of incidental work shall be included in price Bid and Contract Sum.

5.2 Drawing Details

- 5.2.A A typical or representative detail on Drawings shall constitute the standard for workmanship and material throughout corresponding parts of Work. Where necessary, and where reasonably inferable from Drawings, Contractor shall adapt such representative detail for application to such corresponding parts of Work. The details of such adaptation shall be subject to prior approval by SMART. Repetitive features shown in outline on Drawings shall be in exact accordance with corresponding features completely shown.

5.3 Interpretation Of Drawings And Specifications

- 5.3.A Should any discrepancy appear, or any misunderstanding arise as to the import of anything contained in Drawings and Specifications, or should Contractor have any questions or requests relating to Drawings or Specifications, Contractor shall refer the matter to SMART, in writing, in accordance with Section 01 25 00 (Clarification and Modification Procedures). SMART will issue with reasonable promptness written responses, clarifications or interpretations as SMART may determine necessary, which shall be consistent with the intent of and be reasonably inferable from Contract Documents. Such written clarifications or interpretations shall be binding upon Contractor. If Contractor believes that a written response, clarification, or interpretation justifies an adjustment in the Contract Sum or Contract Time, Contractor shall give SMART prompt written notice as provided in Section 01 25 00 (Clarification and Modification Procedures). If the parties are unable to agree to the amount or extent of the adjustment, if any, then Contractor shall perform the Work in conformance with SMART’s response, clarification, or interpretation and may make a written claim for the adjustment as provided in Article 12 of this Document 00 70 00.

5.4 Checking Of Drawings

- 5.4.A Before undertaking each part of Work, Contractor shall carefully study and compare Contract Documents and check and verify pertinent information shown in the Contract Documents and all applicable field conditions and measurements. Contractor shall be responsible for any errors that might have been avoided by such comparison. Contractor shall promptly report to SMART, in writing, any conflict, error, ambiguity or discrepancy that Contractor may discover. Contractor shall obtain a written interpretation or clarification from SMART before proceeding with any Work affected thereby. Dimensions shown on Drawings shall be followed; Contractor shall not scale Drawings.

5.5 Standards To Apply Where Specifications Are Not Furnished

- 5.5.A The following general specifications shall apply wherever in the Specifications, or in any directions given by SMART in accordance with or supplementing Specifications, it is provided that Contractor shall furnish materials or manufactured articles or shall do Work for which no detailed specifications are shown. Materials or manufactured articles shall be of the best grade, in quality and workmanship, obtainable in the market from firms of established good reputation. If not ordinarily carried in stock, the materials or manufactured articles shall conform to industry standards for first class materials or articles of the kind required, with due consideration of the use to which they are to be put. Work shall conform to the usual standards or codes, such as those cited in Section 01 42 19 (References and Definitions), for first class work of the kind required. Contractor shall specify in writing to SMART the materials to be used or Work to be performed under this paragraph 5.5 fourteen (14) Days prior to furnishing such materials or performing such Work.

5.6 Deviation from Specifications and Drawings

- 5.6.A Contractor shall perform Work in accordance with Drawings and Specifications. Contractor shall not deviate from Drawings, or the dimensions given in the Drawings or the Specifications without SMART's advance written approval of the proposed deviation.
- 5.6.B If SMART elects to change the Work, all changes in the Contract Documents will be made as set forth in Article 14 of this Document 00 70 00.

5.7 Ownership And Use Of Drawings, Specifications And Contract Documents

- 5.7.A Drawings, Specifications, and other Contract Documents were prepared for use for Work of Contract Documents only. No part of Contract Documents shall be used for any other construction or for any other purpose except with the written consent of SMART. Any unauthorized use of Contract Documents is prohibited and at the sole liability of the user.

6 CONSTRUCTION BY SMART OR BY SEPARATE CONTRACTORS

6.1 SMART's Right To Perform Construction And To Award Separate Contracts

6.1.A SMART may perform, with its own forces, construction or operations related to the Project. SMART may also award separate contracts in connection with other portions of the Project or other construction or operations, on the Site or areas contiguous to the Site, under conditions similar to these Contract Documents, or may have utility owners perform other work. When separate contracts are awarded for different portions of the Project or other construction or operations on the Site, the term "Contractor" in these Contract Documents shall mean the Contractor herein.

6.2 Mutual Responsibility

6.2.A Contractor shall afford all other contractors, utility owners, and SMART (if SMART is performing work with its own forces), proper and safe access to the Site, and reasonable opportunity for the installation and storage of their materials. Contractor shall ensure that the execution of its Work properly connects and coordinates with others' work and shall cooperate with them to facilitate the progress of the Work.

6.2.B Contractor shall coordinate its Work with the work of other contractors, SMART, local jurisdiction, County, and utility owners. Contractor shall hold coordination meetings with other contractors, SMART and its representatives, and utility owners as required by Section 01 31 19 (Project Meetings).

6.2.C Unless otherwise provided in the Contract Documents, Contractor shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of other contractors, SMART or utility owners by cutting, excavating, or otherwise altering the work of others and will only cut or alter the work of others with the written consent of SMART and the others whose work will be affected.

6.2.D Contractor's duties and responsibilities under paragraph 6.2.A of this Document 00 70 00 are for the benefit of SMART and also for the benefit of such other contractors and utility owners working at the Site to the extent that there are comparable provisions for the benefit of Contractor in the direct contracts between SMART and such other contractors and utility owners.

6.2.E To the extent that any part of Contractor's Work is to interface with work performed or installed by other contractors, SMART, or utility owners, Contractor shall inspect and measure the in-place work. Contractor shall promptly report to SMART in writing any defect in in-place work that will impede or increase the cost of Contractor's interface unless corrected. SMART will require the entity responsible for the Defective Work to make corrections so as to conform to its contract requirements, or, if the defect is the result of an error or omission in the Contract Documents, issue a Change Order. If Contractor fails to measure, inspect and/or report to SMART in writing defects that are reasonably discoverable, Contractor shall bear all costs of accomplishing the

interface acceptable to SMART. This provision shall be included in any and all other contracts or subcontracts for Work to be performed where such a conflict could exist.

6.3 SMART's Authority Over Coordination

- 6.3.A SMART will have authority over coordination of the activities of multiple contractors in cases where SMART performs work with its own forces or contracts with others for the performance of other work on the Project, or utilities work on the Site. SMART may at any time and in its sole discretion, designate a person or entity other than SMART to have authority over the coordination of the activities among the various contractors. SMART's authority with respect to coordination of the activities of multiple contractors and utility owners shall not relieve Contractor of its obligation to other contractors and utility owners to coordinate its Work with other contractors and utility owners as specified in paragraph 6.2 of this Document 00 70 00. Contractor shall promptly notify SMART in writing when another contractor on the Project fails to coordinate its work with the Work of Contract Documents.
- 6.3.B Contractor shall suspend any part of the Work or carry on the same in such manner as directed by SMART when such suspension or prosecution is necessary to facilitate the work of other contractors or workers. No damages or claims by Contractor will be allowed if the suspension or Work change is due in whole or in part to Contractor's failure to perform its obligation to coordinate its Work with other contractors, SMART, and utility owners. Damages or claims will be allowed only to the extent of fault by SMART if the suspension or Work change is due in whole or in part to another contractor's failure to coordinate its work with Contractor, other contractors, SMART, local jurisdictions, County, and utility owners. SMART reserves the right to back charge Contractor for any damages or claims incurred by other contractors as a result of Contractor's failure to perform its obligations to coordinate with other contractors, SMART, and utility owners. SMART may deposit the funds retained with a Court of competent jurisdiction pursuant to applicable interpleader procedures and Contractor releases SMART of further liability regarding such funds.

7 PAYMENT BY SMART

7.1 Receipt And Processing Of Applications For Payment

- 7.1.A As required by Section 01 20 00 (Price and Payment Procedures), Contractor shall prepare the schedules, submit Applications for Payment, and warrant title to all Work covered by each Application for Payment. SMART will review Contractor's Applications for Payment and make payment thereon, and Contractor shall make payments to Subcontractors, suppliers, and others, as required by Section 01 20 00 (Price and Payment Procedures).

8 CONTROL OF THE WORK

8.1 Subcontractors

- 8.1.A Contractor is fully responsible for Contractor's own acts and omissions. Contractor is responsible for all acts and omissions of its Subcontractors, suppliers, and other persons and organizations performing or furnishing any of the Work, labor, materials, or equipment under a direct or indirect contract with Contractor. The Contractor may not assign any portion, or any rights hereunder, of the Contract Documents without the SMART's express written consent or, where applicable, compliance with the Subcontractor Listing Law.

8.2 Supervision Of Work By Contractor

- 8.2.A Contractor shall supervise, inspect, and direct Work competently and efficiently, devoting the attention and applying such personal skills and expertise as may be required and necessary to perform Work in accordance with Contract Documents. Contractor shall be solely responsible for and have control and charge of construction means, methods, techniques, sequences and procedures, safety precautions and programs in connection with the Work. Contractor shall be responsible to see that the completed Work complies accurately with Contract Documents.
- 8.2.B Contractor shall keep on the Site at all times during Work progress a competent resident Superintendent in conformance with paragraph 10.3.A.

8.3 Observation Of Work By SMART

- 8.3.A SMART's Representatives: SMART's Representative(s) will have limited authority to act on behalf of SMART as set forth in the Contract Documents. Except as otherwise provided in these Contract Documents or subsequently identified in writing by SMART, SMART will issue all communications to Contractor through SMART's Representative, and Contractor shall issue all communications to SMART through SMART's Representative in a written document delivered to SMART. Should any direct communications between Contractor and SMART's consultants, architects or engineers not identified in Article 2 of Document 00 52 00 (Agreement) occur during field visits or by telephone, Contractor shall immediately confirm them in a written document copied to SMART's Representative.
- 8.3.B Means and methods of Construction: Subject to those rights specifically reserved in the Contract Documents, SMART will not supervise, or direct, or have control over, or be responsible for, Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or Contractor's failure to comply with laws and regulations applicable to the furnishing or performance of Work. SMART will not be responsible for Contractor's failure to perform or furnish the Work in accordance with Contract Documents.
- 8.3.C In exercising its responsibilities and authorities under the Contract Documents, SMART does not assume any duties or responsibilities to any Subcontractor or supplier and does not assume any duty of care to Contractor, Contractor's

Subcontractors, or suppliers. Except as expressly set forth in the Contract Documents, in exercising their respective responsibilities and authorities under the Contract Documents, neither Architect, Engineer nor any SMART's Representative assumes any duties or responsibilities to any Subcontractor, sub-Subcontractor or supplier nor assumes any duty of care to Contractor or any Subcontractor, sub-Subcontractor or suppliers.

- 8.3.D Work shall be performed under SMART's general observation and administration. Contractor shall comply with SMART's directions and instructions in accordance with the terms of Contract Documents, but nothing contained in these General Conditions shall be taken to relieve Contractor of any obligations or liabilities under the Contract Documents. SMART's failure to review or, upon review, failure to object to any aspect of Work reviewed, shall not be deemed a waiver or approval of any non-conforming aspect of Work.
- 8.3.E SMART may engage an independent consultant or architect (collectively for purposes of this paragraph 8.3, "Consultant") to assist in administering the Work. If so engaged, Consultant will advise and consult with SMART, but will have authority to act on behalf of SMART only to extent provided in the Contract Documents or as set forth in writing by SMART. Consultant will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with Work. Consultant will not be responsible for or have control over the acts or omissions of Contractor, Subcontractors or their agents or employees, or any other persons performing Work.
- 8.3.F Consultant may review Contractor's Submittals, such as Shop Drawings, Product Data, and Samples, but only for conformance with design concept of Work and with information given in the Contract Documents.
- 8.3.G SMART's Consultant and/or representative may visit the Site at intervals appropriate to stage of construction to become familiar generally with the progress and quality of Work and to determine in general if Work is proceeding in accordance with Contract Documents. Based on its observations, SMART's Consultant and/or representative may recommend that it disapprove or reject Work that SMART's Consultant and/or representative believes to be defective or will not produce a complete Project that conforms to Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by Contract Documents. SMART will also have authority to require special inspection or testing of Work, whether or not the Work is fabricated, installed, or completed.
- 8.3.H SMART's Consultant and/or representative may conduct inspections to recommend to SMART the dates that Contractor has achieved Substantial Completion and when the Final Inspection Report can be issued and will receive and forward to SMART for review written warranties and related documents required by Contract Documents.

8.4 Access To Work

- 8.4.A During performance of Work, SMART and its agents, consultants, and employees may at any time enter upon Work, shops, or studios where any part of the Work may be in preparation, or factories where any materials for use in Work are being or are to be manufactured, and Contractor shall provide proper and safe facilities for this purpose and shall make arrangements with manufacturers to facilitate inspection of their processes and products to such extent as SMART's interests may require. Other contractors, SMART workers or utility owners performing work for SMART may also enter upon Work for all purposes required by their respective contracts. Subject to the rights reserved in the Contract Documents, Contractor shall have sole care, custody, and control of the Site and its Work areas.
- 8.4.B SMART may, at any time, and from time to time, during the performance of the Work, enter the Work Site for the for the purpose of installing any necessary work by SMART labor or other contracts, and for any other purpose in connection with the installation of facilities. In doing so, SMART shall endeavor not to interfere with Contractor and Contractor shall not interfere with other work being done by or on behalf of SMART.
- 8.4.C If, prior to completion and final acceptance of all the Work, SMART takes possession of any structure or facility (whether completed or otherwise) comprising a portion of the Work with the intent to retain possession thereof (as distinguished from temporary possession contemplating return to Contractor), then, while SMART is in possession of the same, Contractor shall be relieved of liability for loss or damage to such structure other than that resulting from Contractor's fault or negligence. Such taking of possession by SMART shall not relieve Contractor from any provisions of the Contract respecting such structure, other than to the extent specified in the preceding sentence, nor constitute a final acceptance of such structure or facility. See also Section 01 11 00 (Summary).
- 8.4.D If, following installation of any equipment or facilities furnished by Contractor, defects requiring correction by Contractor are found, SMART shall have the right to operate such unsatisfactory equipment or facilities and make reasonable use thereof until the equipment or facilities can be shut down for correction of defects without injury to SMART.

9 WARRANTY, GUARANTY, AND INSPECTION OF WORK

9.1 Warranty And Guaranty

- 9.1.A General Representations and Warranties: Contractor represents and warrants that it is and will be at all times fully qualified and capable of performing every Phase of the Work and completing Work in accordance with the terms of Contract Documents. Contractor warrants that all construction services shall be performed in accordance with generally accepted professional standards of good and sound construction practices and all requirements of Contract Documents. Contractor warrants that Work, including but not limited to each

item of materials and equipment incorporated therein, shall be new, of suitable grade of its respective kind for its intended use, and free from defects in design, architecture and/or engineering, materials, construction and workmanship. Contractor warrants that Work shall conform in all respects with all applicable requirements of federal, state and local laws, applicable construction codes and standards, licenses and permits, Drawings and Specifications and all descriptions set forth therein, and all other requirements of Contract Documents. Contractor shall not be responsible, however, for the negligence of others in the specification of specific equipment, materials, design parameters and means or methods of construction where that is specifically shown and expressly required by Contract Documents.

- 9.1.B Extended Guarantees: Any guaranty exceeding one year provided by the supplier or manufacturer of any equipment or materials used in the Project shall be extended for such term. Contractor expressly agrees to act as co-guarantor of such equipment and materials and shall supply SMART with all warranty and guaranty documents relative to equipment and materials incorporated in the Project and guaranteed by their suppliers or manufacturers.
- 9.1.C Environmental and Toxics Warranty: The covenants, warranties and representations contained in this paragraph 9.1.C. are effective continuously during Contractor's Work on the Project and following cessation of for any reason including, but not limited to, Project completion. Contractor covenants, warrants, and represents to SMART that:
- 9.1.C.1 To Contractor's knowledge after due inquiry, no lead or Asbestos-containing materials were installed or discovered in the Project at any time during Contractor's construction thereof. If any lead or Asbestos-containing materials were discovered, Contractor made immediate written disclosure to SMART.
- 9.1.C.2 To Contractor's knowledge after due inquiry, no electrical transformers, light fixtures with ballasts or other equipment containing PCBs are or were located on the Project at any time during Contractor's construction thereof.
- 9.1.C.3 To Contractor's knowledge after due inquiry, no storage tanks for gasoline or any other toxic substance are or were located on the Project at any time during Contractor's construction thereof. If any such materials were discovered, Contractor made immediate written disclosure to SMART.
- 9.1.C.4 Contractor's operations concerning the Project are and were not in violation of any applicable environmental federal, state, or local statute, law or regulation dealing with hazardous materials substances or toxic substances and no notice from any governmental body has been served upon Contractor claiming any violation of any such law, ordinance, code or regulation, or requiring or calling attention to the need for any Work, repairs, construction, alteration, or installation on or in connection with the Project in order to comply

with any such laws, ordinances, codes, or regulations, with which Contractor has not complied. If there are any such notices with which Contractor has complied, Contractor shall provide SMART with copies thereof.

9.2 Inspection Of Work

- 9.2.A All materials, equipment, and workmanship used in Work shall be subject to inspection and testing at all times during construction and/or manufacture in accordance with the terms of Contract Documents. Work and materials, and manufacture and preparation of materials, from beginning of construction until Final Completion and acceptance of Work, shall be subject to inspection and rejection by SMART, its agents, representatives, or independent contractors retained by SMART to perform inspection services, or governmental agencies with jurisdictional interests. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site safety procedures and program so that they may comply therewith as applicable. Upon request or where specified, SMART shall be afforded access for inspection at the source of supply, manufacture, or assembly of any item of material or equipment, with reasonable accommodations supplied for making such inspections.
- 9.2.B Contractor shall give SMART timely notice of readiness of Work for all required inspections, tests, or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests. Contractor shall also coordinate, schedule, and give adequate notice to the appropriate inspection personnel of any Work that can only be inspected as it is placed or assembled (for example, concrete or masonry work), to enable the constant presence of such inspection personnel during such Work.
- 9.2.C If applicable laws or regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, and furnish SMART with the required certificates of inspection, or approval. SMART will pay the cost of initial testing and Contractor shall pay all costs in connection with any follow-up or additional testing. Contractor shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for the acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Additionally, in the event that a scheduled inspection is canceled in less than 24 hours' notice by Contractor and SMART incurs costs associated with the cancellation, Contractor will reimburse SMART for the actual costs of the canceled inspections. The amount will be deducted from payment owed Contractor.

- 9.2.D If Contractor covers any Work, or the work of others, prior to any required inspection, test or approval without written approval of SMART, Contractor shall uncover the Work at SMART's request. Contractor shall bear the expense of uncovering Work and replacing Work.
- 9.2.E In any case where Contractor covers Work contrary to SMART's request, Contractor shall uncover Work for SMART's observation or inspection at SMART's request. Contractor shall bear the cost of uncovering and re-covering the Work.
- 9.2.F Whenever required by SMART, Contractor shall furnish tools, labor, and materials necessary to make examination of Work that may be completed or in progress, even to extent of uncovering or taking down portions of finished Work. Should Work be found unsatisfactory, cost of making examination and of reconstruction shall be borne by Contractor. If Work is found to be satisfactory, SMART, in manner herein prescribed for paying for alterations, Modifications, and extra Work, except as otherwise herein specified, will pay for examination.
- 9.2.G Inspection of the Work by or on behalf of SMART, or SMART's failure to do so, shall not under any circumstances be deemed a waiver or approval of any non-conforming aspect of the Work. Contractor shall have an absolute duty, in the absence of a written Change Order signed by SMART, to perform Work in conformance with the Contract Documents.
- 9.2.H Any inspection, evaluation, or test performed by or on behalf of SMART relating to the Work is solely for the benefit of SMART and shall not be relied upon by Contractor. Contractor shall not be relieved of the obligation to perform Work in accordance with the Contract Documents, nor relieved of any guaranty, warranty, or other obligation, as a result of any inspections, evaluations, or tests performed by SMART, whether or not such inspections, evaluations, or tests are permitted or required under the Contract Documents. Contractor shall be solely responsible for testing and inspecting Work already performed to determine whether such Work is in proper condition to receive later Work.

9.3 Correction Of Defective Work

- 9.3.A If Contractor fails to supply sufficient skilled workers, suitable materials or equipment, or to furnish or perform the Work in such a way that the completed Work will conform to Contract Documents, SMART may order Contractor to replace any Defective Work, or stop any portion of Work to permit SMART (at Contractor's expense) to replace such Defective Work. These SMART rights are entirely discretionary on the part of the SMART and shall not give rise to any duty on the part of SMART to exercise the rights for the benefit of Contractor or any other party.
- 9.3.B SMART may direct Contractor to correct any Defective Work or remove it from the Site and replace it with Work that is not Defective and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting from the correction or removal. Contractor shall be responsible for any and all claims, costs, losses and damages caused by or resulting from such correction or

removal. When necessary, a deductive Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, SMART may decide the proper amount or, in its discretion may elect to leave the Contract Sum unchanged and deduct from moneys due Contractor, all such claims, costs, losses and damaged caused by or resulting from the correction or removal. If Contractor disagrees with SMART's calculations, it may make a claim as provided in Article 12 of this Document 00 70 00. SMART's rights under this paragraph 9.3.B shall be entirely discretionary and, like all other SMART rights and remedies under the Contract, in addition to any other rights it may have under the Contract Documents or by law.

9.3.C Correction Period:

9.3.C.1 With respect to equipment and machinery supplied by Contractor and incorporated into the Work, if within one year after the date of Substantial Completion of the portion of the Work incorporating the equipment and/or machinery (or, to the extent expressed by Change Order or Certificate of Substantial Completion, one year after SMART's written acceptance of such equipment), or such longer period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents (including extended warranties), any equipment or machinery is found to be Defective, Contractor shall promptly, without cost to SMART and in accordance with SMART's written instructions, correct such Defective Work.

9.3.C.2 With respect to structures within the Scope of Work, if within one year after the date of Substantial Completion of the Work, or such longer period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents, any Work is found to be defective, Contractor shall promptly, without cost to SMART and in accordance with SMART's written instructions, correct such Defective Work.

9.3.D Contractor shall remove any Defective Work rejected by SMART and replace it with Work that is not Defective, and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Contractor fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, SMART may have the Defective Work corrected or the rejected Work removed and replaced.

9.3.E Contractor shall pay for all claims, costs, losses, and damages caused by or resulting from such removal and replacement. Where Contractor fails to correct Defective Work, or defects are discovered outside the correction period, SMART shall have all rights and remedies granted by law.

9.3.F Additionally, in special circumstances where a part of the Work is occupied or a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that part of Work or that

item may start to run from an earlier date if so, provided by Change Order or Certificate of Substantial Completion.

- 9.3.G Where Defective Work or rejected Work (and damage to other Work resulting therefrom) has been corrected, removed, or replaced under this provision after the commencement of the correction period, the correction period hereunder with respect to such Work shall be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- 9.3.H If following installation of any Work furnished by Contractor, defects requiring correction by Contractor are found, SMART shall have the right to operate such Work and make reasonable use thereof until it can be shut down for correction of defects without causing injury to SMART.

9.4 Acceptance And Correction Of Defective Work By SMART

- 9.4.A SMART may accept Defective Work. Contractor shall pay all claims, costs, losses, and damages (including but not limited to staff and Consultant time) attributable to SMART's evaluation of and determination to accept such Defective Work. If SMART accepts any Defective Work prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, SMART may deduct from moneys due Contractor, all claims, costs, losses, damages, expenses, and liabilities attributable to the Defective Work. If Contractor disagrees with SMART's calculations, Contractor may make a claim as provided in Article 12 of this Document 00 70 00. If SMART accepts any Defective Work after final payment, Contractor shall pay to SMART, an appropriate amount as determined by SMART.
- 9.4.B SMART may correct and remedy deficiency if, after five Days' written notice to Contractor, Contractor fails to correct Defective Work or to remove and replace rejected Work in accordance with paragraph 9.3.B of this Document 00 70 00; or provide a plan for correction of Defective Work acceptable to SMART; or perform Work in accordance with Contract Documents. In connection with such corrective and remedial action, SMART may exclude Contractor from all or part of the Site; take possession of all or part of Work and suspend Contractor's Work related thereto; take possession of all or part of Contractor's tools, appliances, construction equipment and machinery at the Site; and incorporate in Work any materials and equipment stored at the Site or for which SMART has paid Contractor but which are stored elsewhere. Contractor shall allow SMART, its representatives, agents, employees, and other contractors and Architect's consultants' access to the Site to enable SMART to exercise the rights and remedies under this paragraph 9.4.B. Contractor shall be responsible for all claims, costs, losses, damages, expenses, and liabilities incurred or sustained by SMART in exercising such rights and remedies. A Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to

Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, SMART may deduct from moneys due Contractor, all claims, costs, losses, and damages caused by or resulting from the correction or removal. If Contractor disagrees with SMART's calculations, Contractor may make a claim as provided in Article 12 of this Document 00 70 00.

9.5 Rights Upon Inspection or Correction

- 9.5.A Contractor shall not be allowed an extension of Contract Time because of any delay in the performance of Work attributable to the exercise by SMART of its rights and remedies under this Article 9. Where SMART exercises its rights under this Article 9, it retains all other rights it has by law or under the Contract Documents including, but not limited to, the right to terminate for default Contractor's right to proceed with the Work under the Contract Documents and/or make a claim or back charge where a Change Order cannot be agreed upon.
- 9.5.B Inspection by SMART shall not relieve Contractor of its obligation to have furnished material and workmanship in accordance with Contract Documents. Payment for Work completed through periodic progress payments or otherwise shall not operate to waive SMART's right to require full compliance with Contract Documents and shall in no way be deemed as acceptance of the Work paid, therefore. Contractor's obligation to complete the Work in accordance with Contract Documents shall be absolute unless SMART agrees otherwise in writing. Contractor shall immediately correct defective Work upon Contractor's knowledge of the defective Work, regardless of SMART's issuance of a correction notice or otherwise identifying the defective Work.

9.6 Samples and Tests Of Materials And Work

- 9.6.A Contractor shall furnish, in such quantities and sizes as may be required for proper examination and tests, Samples or test specimens of all materials to be used or offered for use in connection with Work. Contractor shall prepare Samples or test specimens at its expense and furnish them to SMART. Contractor shall submit all Samples in ample time to enable SMART to make any necessary tests, examinations, or analyses before the time it is desired to incorporate the material into the Work.

9.7 Proof of Compliance Of Contract Provisions

- 9.7.A In order that SMART may determine whether Contractor has complied or is complying with requirements of Contract Documents not readily enforceable through inspection and tests of Work and materials, Contractor shall at any time, when requested, submit to SMART properly authenticated documents or other satisfactory proofs of compliance with all applicable requirements.

9.8 Acceptance

- 9.8.A Inspection by SMART or its authorized agents or representatives, any order or certificate for the payment of money, any payment, acceptance of the whole or

any part of Work by SMART, any extension of time, any verbal statements on behalf of SMART or its authorized agents or representatives shall not operate as a waiver or modification of any provision of the Contract Documents, or of any power reserved to SMART herein or therein or any right to damages provided in the Contract Documents. Any waiver of any breach of the Contract Documents shall not be held to be a waiver of any other subsequent breach. Upon completion of Final Inspection and approval by SMART or its authorized agents or representatives, SMART may issue the Notice of Final Acceptance.

10 CONTRACTOR'S ORGANIZATION AND EQUIPMENT

10.1 Contractor's Legal Address

10.1.A Address and facsimile number given in Contractor's Bid are hereby designated as Contractor's legal address and facsimile number. Contractor may change its legal address and facsimile number by notice in writing, delivered to SMART, which in conspicuous language advises SMART of a change in legal address or facsimile number, and which SMART accepts in writing. Delivery of any drawings, notice, letter, or other communication to Contractor's legal address or depositing in any post office or post office box regularly maintained by the United States Postal Service, in a wrapper with postage affixed, directed to Contractor at legal address shall be deemed legal and sufficient service thereof upon Contractor. Facsimile to Contractor's designated facsimile number of any letter, memorandum, or other communication on standard or legal sized paper, with proof of facsimile transmission, shall be deemed legal and sufficient service thereof upon Contractor.

10.2 Contractor Documents At The Work Site

10.2.A Contractor shall maintain a copy of the current project plans, specifications and Contractor's markup copy (As-Built) while on site. As needed, the Contractor shall also maintain copies of project specific permits and SWPPP documentation while on site. All documents shall be available to SMART for on-site review, or for regulatory agency on site review as required in project permit conditions.

10.3 Contractor's Superintendents Or Forepersons

10.3.A Contractor shall at all times while Work is being performed at site, be represented on Site by a competent resident Superintendent authorized and competent to receive and carry out any instructions that SMART may give and shall be liable for faithful observance of instructions delivered to Contractor. Said Superintendent shall not be replaced without SMART's express written consent. The Superintendent shall be Contractor's representative at the Site and shall have complete authority to act on behalf of Contractor. All communications to and from the Superintendent shall be as binding as if given to or by Contractor. Communications, instructions, or Drawings given to Contractor's representative shall be deemed to have been given to Contractor.

10.3.B In the event that the designated Superintendent is unable to be present at the site, Contractor shall designate a substitute Superintendent, subject to SMART's

approval, and shall obtain SMART's consent as to time and duration of any such substitution.

10.4 Proficiency in English

10.4.A Supervisors, security guards, safety personnel and employees who have unescorted access to the Site shall possess proficiency in the English language in order to understand, receive and carry out oral and written communications or instructions relating to their job functions, including safety and security requirements.

10.5 Contractor's and Subcontractors' Employees

10.5.A Contractor shall employ, and shall permit its Subcontractors to employ, only competent and skillful personnel to do Work. If SMART notifies Contractor that any of its employees, or any of its Subcontractors' employees on Work is incompetent, unfaithful, disorderly or profane, or fails to observe customary standards of conduct or refuses to carry out any provision of the Contract Documents, or uses harassing, threatening or abusive language at the site to any person representing SMART or to any member of the public, or violates sanitary rules, or is otherwise unsatisfactory, and if SMART requests that such person be discharged from Work, then Contractor or its Subcontractor shall immediately discharge such person from Work and the discharged person shall not be re-employed on the Work except with consent of SMART.

10.6 Contractor's Use Of The Site

10.6.A Contractor shall not make any arrangements with any person to permit occupancy or use of any land, structure or building within the limits of the Work, for any purpose whatsoever, either with or without compensation, in conflict with any agreement between SMART and any owner, former owner or tenant of such land, structure or buildings. Contractor may not occupy SMART-owned property outside the limit of the Work as indicated on the Drawings unless it obtains prior approval from SMART.

11 PROSECUTION AND PROGRESS OF THE WORK

11.1 Schedules And Examinations Of Contract Documents

11.1.A Contractor shall submit schedules, reports, and submittals in the appropriate quantity and within the required time, arrange conferences and meetings and proceed with the Work in accordance with Contract Documents, including Sections 01 31 19 (Project Meetings), 01 32 16 (Progress Schedules and Reports), and 01 33 00 (Submittal Procedures).

11.1.B Contractor shall submit to SMART for review and discussion:

11.1.B.1 At the Preconstruction Conference described in Section 01 31 19 (Project Meetings), Progress Schedules, and Reports as required by Sections 01 32 16 (Progress Schedules and Reports) and 01 33 00 (Submittal Procedures). Contractor shall utilize Progress Schedule in planning, scheduling, coordinating, performing and controlling Work

(including all activities of Subcontractors, assigned contractors, equipment vendors and suppliers). Contractor shall update Progress Schedule on a monthly basis to depict accurately the actual progress of Work and for evaluating and preparing Contractor's monthly progress payments. Contractor's failure to submit and maintain an acceptable Progress Schedule may, in SMART's discretion, and without limiting the materiality of Contractor's other obligations under the Contract Documents, constitute grounds to declare Contractor in material breach of the Contract Documents.

11.1.B.2 As required, a preliminary Schedule of Values conforming to Section 01 20 00 (Payment Procedures) paragraph 1.6.C. shall be submitted to SMART. See Section 01 20 00 (Price and Payment Procedures) for further requirements regarding the Schedule of Values.

11.1.C Unless otherwise provided in the Contract Documents, SMART will review for acceptability the schedules submitted in accordance with paragraph 11.1.B of this Document 00 70 00. Contractor shall make corrections and adjustments to complete and resubmit the schedules and shall secure SMART's written acceptance prior to submitting first payment request. Schedules shall be updated and completed as required by Sections 01 20 00 (Price and Payment Procedures), 01 32 16 (Progress Schedules and Reports) and 01 33 00 (Submittal Procedures). No progress or mobilization payment shall be due or owing to Contractor until the schedules are submitted to and acceptable to SMART as meeting the requirements of the Contract Documents, including Sections 01 20 00 (Price and Payment Procedures), 01 32 16 (Progress Schedules and Reports) and 01 33 00 (Submittal Procedures). SMART's acceptance of Contractor's schedules will not create any duty of care or impose on SMART any responsibility for the sequencing, scheduling or progress of Work nor will it interfere with or relieve Contractor from Contractor's full responsibility, therefore.

11.2 Commencement of Work Notification

11.2.A Before commencing any portion of Work, Contractor shall inform SMART in writing as to time and place at which Contractor wishes to commence Work, and nature of Work to be done, in order that proper provision for inspection of Work may occur, and to assure measurements necessary for record and payment. Information shall be given to SMART in a reasonable time in advance of time at which Contractor proposes to begin Work, so that SMART may complete necessary preliminary work without inconvenience or delay to Contractor.

11.3 Submittals

11.3.A Contractor shall submit Submittals to SMART for review in strict accordance with Section 01 33 00 (Submittal Procedures). Submission of a Submittal shall constitute Contractor's representation that all requirements of Section 01 33 00 (Submittal Procedures) have been complied with. All Submittals will be identified as SMART may require and in the number of copies specified in Section 01 33 00 (Submittal Procedures).

11.3.B Contractor shall not perform Work that requires submission of a Submittal prior to submission and favorable review of the Submittal. Where a Submittal is required by Contract Documents or the final Schedule of Submittals (if required) accepted by SMART, any related Work performed prior to SMART's approval of the pertinent Submittal shall be at the sole expense, responsibility, and risk of Contractor.

11.4 Contractor To Supply Sufficient Workers And Materials

11.4.A Unless otherwise required by SMART under the terms of Contract Documents, Contractor shall at all times keep on the Site materials and employ qualified workers sufficient to prosecute Work at a rate and in a sequence and manner necessary to complete Work within the Contract Time. This obligation shall remain in full force and effect notwithstanding disputes or claims of any type.

11.4.B At any time during progress of Work should Contractor directly or indirectly (through Subcontractors) refuse, neglect, or be unable to supply sufficient materials or employ qualified workers to prosecute the Work as required, then SMART may issue a written notice to Contractor, requiring Contractor to accelerate the Work and/or furnish additional qualified workers or materials as SMART may consider necessary, at no cost to SMART. If Contractor does not comply with the notice within five (5) Days of date of service thereof, SMART shall have the right (but not a duty) to provide materials and qualified workers to finish the Work or any affected portion of Work, as SMART may elect. SMART may, at its discretion, exclude Contractor from the Site, or portions of the Site or separate Work elements during the time period that SMART exercises this right. SMART will deduct from moneys due, or which may thereafter become due under the Contract Documents, the sums necessary to meet expenses thereby incurred and paid to persons supplying materials and doing Work. SMART will deduct from funds or appropriations set aside for purposes of Contract Documents the amount of such payments and charge them to Contractor as if paid to Contractor. Contractor shall remain liable for resulting delay, including liquidated damages and indemnification of SMART from claims of others.

11.4.C Exercise by SMART of the rights conferred upon SMART in paragraph 11.4.B of this Document 00 70 00, is entirely discretionary on the part of SMART. SMART shall have no duty or obligation to exercise the rights referred to in paragraph 11.4.B of this Document 00 70 00 and its failure to exercise such rights shall not be deemed an approval of existing Work progress or a waiver or limitation of SMART's right to exercise such rights in other concurrent or future similar circumstances. The rights conferred upon SMART under paragraph 11.4.B of this Document 00 70 00 are cumulative to SMART's other rights under any provision of the Contract Documents.

11.4.D SMART may, if it deems necessary for reasons other than those described in Paragraph 10.6.B, direct Contractor to accelerate the Work by increasing crew sizes, working overtime (as permitted by law) and/or performing shift work. If directed to perform overtime and/or shift work, Contractor will work said

overtime and/or shift work, and the SMART shall pay Contractor solely for the additional premium wages paid, plus taxes imposed by law on such additional wages. Unless otherwise directed by the SMART, accelerated work shall be performed utilizing the most cost-effective available method. For example, the SMART shall not be responsible to pay the premium for overtime work if the same work could have been performed on second shift utilizing a lower premium.

11.5 Contractor's Project Data

- 11.5.A Contractor shall maintain full and correct information as to the number of workers employed in connection with each subdivision of Work, the classification and rate of pay of each worker in form of certified payrolls, the cost to Contractor of each class of materials, tools and appliances used by Contractor in Work, and the amount of each class of materials used in each subdivision of Work. Contractor shall provide SMART with monthly summaries of this information. If Contractor maintains or is capable of generating summaries or reports comparing actual Project costs with Bid estimates or budgets, Contractor shall provide SMART with a copy of such report upon SMART's request and whenever it is generated.
- 11.5.B Contractor shall maintain daily job reports recording all significant activity on the job, including the number of workers on Site, Work activities, problems encountered and delays. Contractor shall provide SMART with copies for each Day Contractor works on the Project, to be delivered to SMART either the same Day or the following morning before starting Work at the Site. Contractor shall take monthly progress photographs of all areas of the Work. Contractor shall maintain copies of all correspondence with Subcontractors and records of meetings with Subcontractors.
- 11.5.C SMART shall have the right to audit and copy Contractor's books and records of any type, nature or description relating to the Project (including but not limited to financial records reflecting in any way costs claimed on the Project), and to inspect the Site, including Contractor's trailer, or other job Site office, and this requirement shall be contained in the subcontracts of Subcontractors working on Site. By way of example, SMART shall have the right to inspect and obtain copies of all Contract Documents, planning and design documents, Bid proposal and negotiation documents (subject to Document 00670 [Escrow Bid Documents] if required by the Contract Documents), cost records and job cost variance reports, design modification proposals, value engineering or other cost reduction proposals, revisions made to the original design, job Progress Reports, photographs, and as-built drawings maintained by Contractor. SMART and any other applicable governmental entity shall have the right to inspect all information and documents maintained under this paragraph 11.5 at any time during the Project and for a period of five years following Substantial Completion. This right of inspection shall not relieve Contractor of its duties and obligations under the Contract Documents. This right of inspection shall be

specifically enforceable in a court of law, either independently or in conjunction with enforcement of any other rights in the Contract Documents.

- 11.5.D Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Contract Modifications, Change Orders, Construction Change Directives, Force Account orders, and written interpretations and clarifications in good order and annotated to show all changes made during construction. These Project Record Documents, together with all approved Samples and a counterpart of all approved Shop Drawings, shall be maintained and available to SMART for reference. Upon completion of the Work, Contractor shall deliver to SMART, the Project Record Documents.

12 CLAIMS BY CONTRACTOR/NON-JUDICIAL SETTLEMENT PROCEDURE

12.1 Scope

- 12.1.A The claim notice and documentation procedure described in this Article 12 applies to all claims and disputes arising under the Contract Documents, including without limitation any claim or dispute by any Subcontractor or material supplier, and any claims arising under tort law as well as contract law. All Subcontractors and supplier claims of any type shall be brought only through Contractor as provided in this Article 12. Under no circumstances shall any Subcontractor or supplier make any direct claim against SMART.
- 12.1.B “Claim” means a written demand or written assertion by Contractor seeking, as a matter of right, the payment of money, the adjustment or interpretation of Contract Documents terms, or other relief arising under or relating to Contract Documents. In order to qualify as a “claim,” the written demand must state that it is a claim submitted under this Article 12. A voucher, invoice, proposed change, Application for Payment, cost proposal, RFI, change order request, or other routine or authorized form of request for payment is not a claim under the Contract Documents. If such request is disputed as to liability or amount, then the disputed portion of the submission may be converted to a claim under the Contract Documents by submitting a separate notice and claim in compliance with claim submission requirements herein.
- 12.1.C The provisions of this Article 12 constitute a non-judicial claim settlement procedure, and also step one of a two-step claim presentment procedure by agreement under Section 930.2 of the California Government Code. Specifically, step one is compliance with this contract claims procedure and filing/administering timely contract claims in accordance with the Contract Documents. Step two is filing a timely Government Code Section 910 claim in accordance with the California Government Code. Any Government Code Section 910 claims shall be presented in accordance with the Government Code and shall affirmatively indicate Contractor’s prior compliance with the claims procedure herein and previous dispositions under this Article.
- 12.1.D The provisions of this Article 12 shall survive termination, breach, or completion of the Contract Documents. Contractor shall bear all costs incurred in the preparation and submission of a claim.

12.2 Procedure

- 12.2.A Disputed Work. Should any clarification, determination, action, or inaction by SMART or Architect/Engineer, Work, third party, or any other event whatsoever, in the opinion of Contractor, exceed the requirements of or not comply with Contract Documents in any way, or otherwise result in Contractor seeking additional compensation in time or money or damages for any reason (collectively "Disputed Work"), then Contractor shall so notify SMART. Contractor and SMART shall make good faith attempts to resolve informally any and all such issues, claims and/or disputes.
- 12.2.B Duty to Work During Disputes. Notwithstanding any dispute or Disputed Work, Contractor shall continue to prosecute the Work and the Disputed Work in accordance with the determinations of SMART. Contractor's sole remedy for Disputed Work is to pursue the remedies in this Article 12 and follow the determinations of SMART.
- 12.2.C Timely Notice of Disputed Work Required. Before commencing any Disputed Work, or within ten (10) Days after Contractor's first knowledge of the Disputed Work, whichever is earlier, Contractor shall file a written notice and preliminary cost proposal for the Disputed Work with SMART stating clearly and in detail its objection and reasons for contending the Disputed Work is outside or in breach of the requirements of Contract Documents. The written notice must identify the subcontractors, vendors, suppliers effected, if any, sufficient for SMART to visit the site to inspect the work and/or conduct a telephonic interview of the persons involved, and/or to photograph the work in question; and Contractor is encouraged to supply digital photographs by email if possible. The preliminary cost proposal must provide a good faith preliminary estimate of the labor (workers, crews), equipment and/or materials involved, and a corresponding good faith preliminary estimate of cost. If a written notice and preliminary cost proposal for Disputed Work is not issued within this time period, or if Contractor proceeds with the Disputed Work without first having given the notice of the Disputed Work, Contractor shall waive its rights to further claim on the specific issue.
- 12.2.D Timely Notice of Potential Claims Required. SMART will review Contractor's timely notice and preliminary cost proposal for Disputed Work and provide a decision. If, after receiving the decision, Contractor disagrees with it or still considers the Work required of it to be outside of the requirements of Contract Documents, then Contractor shall so notify SMART, in writing, within ten (10) Days after receiving the decision, by submitting a notice of potential claim, stating that a formal claim will be issued. (If SMART should fail to provide a decision on a notice and preliminary cost proposal within thirty (30) days, then Contractor shall submit a notice of potential claim within ten days following the thirtieth (30th) day, i.e., or by the 40th day following the notice and preliminary cost proposal.) Contractor shall continue to prosecute the Disputed Work to completion.

- 12.2.E Quarterly Claims Required. At the end of each calendar year quarter (March 31, June 30, September 30, and December 31) of each year, for each and every notice of potential claim that Contractor may have submitted in that quarter, Contractor shall submit a formal claim in the form specified herein. Contractor may file a single consolidated claim each quarter, or may file separate claims each quarter, as Contractor sees fit, provided Contractor complies with the requirements below. (Contractor may defer until the next reporting period the filing of a formal claim for any notices of potential claim timely issued within the last 15 days of the prior quarter.) The formal claim(s) shall include all arguments, justification, cost or estimates, schedule analysis, and detailed documentation supporting Contractor's position, for each notice of potential claim that Contractor intends to pursue as a formal claim (further described below).
- 12.2.F Claim Updates Required. If Disputed Work persists longer than a single calendar quarter, then Contractor shall, every quarter until the Disputed Work ceases, submit to SMART a document titled "Claim Update" that shall update and quantify all elements of the claim as completely as possible. Contractor's failure to submit a Claim Update or to quantify costs every quarter shall result in waiver of the claim for that period. Claims or Claim Updates stating that damages, total damages (direct and indirect), schedule impact and/or any time extension will be determined at a later date shall not comply with this subparagraph and shall result in Contractor waiving its claim(s). Contractor shall also maintain a continuing "claims log" that shall list all outstanding claims and their value and provide such log to SMART quarterly.
- 12.2.G Claim Negotiations required. Upon receipt of Contractor's formal claim(s) including all arguments, justifications, cost or estimates, schedule analysis, and documentation supporting its position as required herein, SMART or its designee will review the issue and render a final determination. Contractor and SMART may mutually agree upon a claims resolution protocol, a neutral facilitator or mediator, or other alternative dispute resolution procedures, as appropriate. SMART may in its discretion conduct an administrative hearing on Contractor's claim, in which case Contractor shall appear, participate, answer questions and inquiries, and present any further document, schedules or analysis requested by SMART to evaluate and decide Contractor's claim.

12.3 Claim Format

- 12.3.A Contractor shall submit the formal claim(s) with a cover letter and certification of the accuracy of the formal claim.
- 12.3.B The formal claim(s) shall list separately each notice of potential claim that Contractor intends to pursue as a formal claim(s), and for each such item separately, Contractor shall provide the following:
- 12.3.B.1 Summary of the claim, including underlying facts, entitlement, schedule analysis, quantum calculations, contract provisions supporting relief;

- 12.3.B.2 List of documents relating to claim including Specifications, Drawings, clarifications/requests for information, schedules, notices of delay, and any others;
 - 12.3.B.3 Chronology of events and correspondence;
 - 12.3.B.4 Analysis of claim merit;
 - 12.3.B.5 Analysis of claim cost; and
 - 12.3.B.6 Attach supporting cost and schedule documents as required in this Article and elsewhere in the Contract Documents (e.g., Section 01 32 16).
- 12.3.C For each notice of potential claim that Contractor intends to pursue as a formal claim, Contractor shall establish in the formal claim a direct causal link between the separate item of cost/time requested, the separate notices of potential claim timely issued, and the specific changed Work asserted. Total cost claims shall not be allowed.
- 12.3.D Claims shall be calculated in the same manner as Change Orders per Section 01 25 00 (Clarification and Modification Procedures). EXCEPT WHERE PROVIDED BY LAW, OR ELSEWHERE IN THESE CONTRACT DOCUMENTS (IF APPLICABLE), SMART SHALL NOT BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES, AND CONTRACTOR SHALL NOT INCLUDE THEM IN ITS CLAIMS. CONTRACTOR SHALL BE LIMITED IN ITS RECOVERY ON CLAIMS TO THE CHANGE ORDER CALCULATIONS SET FORTH IN SECTION 01 25 00 (CLARIFICATION AND MODIFICATION PROCEDURES).

12.4 Mediation

- 12.4.A If Contractor's claims submitted in accordance with this Article 12 at Project completion total less than \$375,000, then claims resolution shall first proceed in the manner prescribed by Article 1.5, Chapter 1, Part 3 of Division 2 of the California Public Contract Code, found in Section 01 41 00 (Regulatory Requirements).
- 12.4.B If Contractor's claims submitted in accordance with this Article 12 at Project completion exceed \$375,000, then, as a condition precedent to litigation (or if otherwise permitted by the Contract Documents, arbitration) thereon, such claims must first be mediated. Mediation shall be non-binding and utilize the services of a mediator mutually acceptable to the parties and, if the parties cannot agree, a mediator selected by the American Arbitration Association from its panel of approved mediators trained in construction industry mediation, having a minimum of twenty (20) years' experience in the construction industry. All statutes of limitation shall be tolled from the date of the demand for mediation until a date two weeks following the mediation's conclusion. All unresolved Contractor claims shall be submitted to the same mediator. The cost of mediation shall be equally shared.

12.5 Subcontractor Claims

- 12.5.A Contractor shall present as its claims all Subcontractor, sub-Subcontractor and supplier claims of any type, and prove them under the terms of the Contract

Documents. SMART shall not be directly liable to any Subcontractor, any supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages or extra costs of any type arising out of or resulting from the Project.

12.6 Waiver

- 12.6.A If Contractor fails to comply with this Article 12 as to any claim, then Contractor shall waive its rights to such claim.
- 12.6.B All claim(s), Disputed Work items or issue(s) not raised in a timely notice, timely notice of potential claim and then timely claim submitted under this Article 12, may not be asserted in any subsequent Government Code section 910 claim, litigation, or legal action.
- 12.6.C Contractor may request an extension of time to comply with the claims procedure herein but must do so in advance of time periods expiring and SMART must give its approval in writing (which approval may be withheld in SMART discretion.) As to any other feature of the claim procedure herein (and its claims waiver feature), it may not be waived or altered absent a written change order signed by both parties and approved as to form by their legal counsel.
- 12.6.D SMART shall not be deemed to waive or alter any provision under this Article 12, if at SMART's sole discretion, a claim is administered in a manner not in accord with this Article 12.

13 LEGAL AND MISCELLANEOUS

13.1 Laws and Regulations

- 13.1.A Contractor shall keep fully informed of and shall comply with all laws, ordinances, regulations and orders of any properly constituted authority affecting the Contract Documents, Work and persons connected with Work, and shall protect and indemnify SMART and its officers, employees, consultants and agents against any claim or liability, including attorney's fees, arising from or based on violation of law, ordinance, regulation or order, whether by Contractor or by Subcontractors, employees or agents. Authorized persons may at any time enter upon any part of Work to ascertain compliance of all applicable laws, ordinances, regulations, and orders.
- 13.1.B Whenever Drawings and Specifications require higher standards than are required by any applicable law, ordinance, regulation or order, Drawings and Specifications shall govern. Whenever Drawings and Specifications require something that will violate such laws, ordinances, regulations, or orders, then such laws, ordinances, regulations or orders shall govern.
- 13.1.C Contractor shall comply with applicable portions of Title 8 (Industrial Relations), Title 19 (Public Safety), Title 22 (Social Security, Division of Health) and Title 24 (California Building Standards Code), California Code of Regulations (Uniform Building Code) (most recent edition), Public Contract Code. Whenever Contract Documents require larger sizes or higher standards than are required by any applicable law, ordinance, regulation or order, Contract Documents shall govern.

Whenever Contract Documents require something that will violate such laws, ordinances, regulations, or orders, then such laws, ordinances, regulations or orders shall govern.

13.2 Permits and Taxes

13.2.A SMART will pay applicable building permits, school, sanitation, and water demand fees, except as otherwise provided in Section 01 11 00 (Summary of Work). Unless otherwise noted in Section 01 11 00 (Summary of Work), Contractor shall procure all permits and licenses applicable to the Work (including environmental matters to the extent applicable); pay all charges and fees, including fees for street opening permits; comply with, implement and acknowledge effectiveness of all permits; initiate and cooperate in securing all required notifications or approvals therefore; and give all notices necessary and incident to due and lawful prosecution of Work. Contractor shall pay all fees related to deferred submittals such as, but not limited to, fire sprinkler system, underground utilities, fuel storage tank and fire alarm system. Contractor shall pay all sales and/or use taxes levied on materials, supplies, or equipment purchased and used on or incorporated into Work, and all other taxes properly assessed against equipment or other property used in connection with Work, without any increase in the Contract Sum. Contractor shall make necessary arrangements with proper authorities having jurisdiction over roads, streets, pipelines, navigable waterways, railroads, and other works in advance of operations, even where SMART may have already obtained permits for the Work.

13.3 Suspension of Work

13.3.A SMART may, without cause, order Contractor in writing to suspend, delay or interrupt Work in whole or in part for such period of time as SMART may determine. An adjustment shall be made for increases in cost of performance of Work of the Contract Documents caused by any such suspension, delay or interruption, calculated using the measures set forth in Section 01 25 00 (Clarification and Modification Procedures). No adjustment shall be made to extent that:

13.3.A.1 Performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible; or

13.3.A.2 An equitable adjustment is made or denied under any other provision of Contract Documents; or

13.3.A.3 The suspension of Work was the direct or indirect result of Contractor's failure to perform any of its obligations hereunder. Adjustments made in cost of performance may have a mutually agreed fixed or percentage fee; if the parties cannot agree, Contractor may file a claim under Article 12 of this Document 00 70 00.

13.4 Termination of Contract For Cause

- 13.4.A SMART may declare Contractor in default of Contract Documents and SMART may terminate Contractor's right to proceed under the Contract Documents for cause:
- 13.4.A.1 Should Contractor make an assignment for the benefit of creditors; admit in writing its inability to pay its debts as they become due; file a voluntary petition in bankruptcy; be adjudged as bankrupt or insolvent; be the subject of an involuntary petition in bankruptcy which is not dismissed within 60 Days; file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation; file any answer admitting or not contesting the material allegations of a petition filed against Contractor in any such proceeding; or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Contractor or of all or any substantial part of its properties or if Contractor, its directors or shareholders, take action to dissolve or liquidate Contractor; or
- 13.4.A.2 Should Contractor commit a material breach of the Contract Documents. If SMART declares Contractor in default due to material breach, however, SMART must allow Contractor an opportunity to cure such breach within 10 Days of the date of notice from SMART to Contractor providing notice of the default; or, if such breach is curable but not curable within such 10-Day period, within such period of time as is reasonably necessary to accomplish such cure; or
- 13.4.A.3 Should Contractor violate or allow (by a Subcontractor or other person or entity for which Contractor is responsible) a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency applicable to the Project or Work and does not cure (or cause to be cured) such violation within 10 Days of the date of the notice from SMART to Contractor demanding such cure; or, if such violation is curable but not curable within such 10-Day period, within such period of time as is reasonably necessary to accomplish such cure.
- 13.4.B In order for Contractor to avail itself of a time period in excess of 10 Days, pursuant to subsections 13.4.A.2 and 13.4.A.2, Contractor must provide SMART within the 10-Day period with a written plan acceptable to SMART to cure said breach or violation which includes, for example, evidence of necessary resources, Subcontractor commitments, schedules and recovery schedules meeting Contract Document requirements and showing a realistic and achievable plan to cure the breach or violation. Contractor must then diligently commence and continue such cure according to the written plan.
- 13.4.C If SMART at any time reasonably believes that Contractor is or may be in default under the Contract Documents as provided in paragraph 13.4.A of this Document

00 70 00, SMART may in its sole discretion notify Contractor of this fact and request written assurances from Contractor of performance of Contract Documents and a written plan from Contractor to remedy any default under the terms of Contract Documents which SMART may advise Contractor of in writing. Contractor shall, within 10 Days of SMART's request, deliver a written cure plan which meets the requirements of the written plan deliverable under paragraph 13.4.A.2 of this Document 00 70 00. Failure of Contractor to provide such written assurances of performance and the required written plan, within 10 Days of request, will constitute a material breach of Contract Documents sufficient to justify termination for cause.

- 13.4.D In event of termination for cause, SMART will immediately serve written notice thereof upon Surety, if a Construction Performance Bond was required under contract, and Contractor. Surety shall have the rights and obligations set forth in Document 00 61 13.13 (Performance Bond). Subject to the Surety's rights under the Performance Bond (which rights are waived upon a default thereunder), SMART may take over the Work and prosecute it to completion by contract or by any other methods it may deem advisable.
- 13.4.E In the event of termination by SMART as provided in paragraph 13.4.A of this Document 00 70 00 for cause:

13.4.E.1 SMART will compensate Contractor for the value of the Work delivered to SMART upon termination as determined in accordance with the Contract Documents, subject to all rights of offset and back charges, and provided that Contractor provides SMART with updated as-builts and Project Record Documents showing the Work performed up to the date of termination. However, SMART will not compensate Contractor for its costs in terminating the Work or any cancellation charges owed to third parties.

13.4.E.2 Contractor shall deliver to SMART possession of the Work in its then condition including, but not limited to, all designs, engineering, Project records, Project Record Documents, cost data of all types, Drawings and Specifications and contracts with vendors and Subcontractors, all other documentation associated with the Project, and all construction supplies and aids dedicated solely to performing the Work which, in the normal course of construction, would be consumed or only have salvage value at the end of the construction period. Contractor shall remain fully liable for the failure of any Work completed and materials and equipment provided through the date of such termination to comply with the provisions of the Contract Documents. The provisions of this paragraph 13.4.E shall not be interpreted to diminish any right which SMART may have to claim and recover damages for any breach of Contract Documents or otherwise, but rather, Contractor shall compensate SMART for all loss, cost, damage, expense, and/or liability suffered by SMART as a

result of such termination and failure to comply with Contract Documents.

- 13.4.F SMART's rights under paragraph 13.4.E.2 shall be specifically enforceable to the greatest extent permitted by law. SMART shall, to the extent applicable, have all other rights and remedies set forth in any Contract Document.
- 13.4.G SMART may terminate portions or parts of the Work for cause, provided these portions or parts (i) have separate geographic areas from parts or portions of the Work not terminated or (ii) are limited to the Work of one or more specific trades or Subcontractors. In such case, Contractor shall cooperate with other contractors as required under Article 6 of this Document 00 70 00.
- 13.4.H In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and Contractor shall have no greater rights than it would have had following a termination for convenience. Any Contractor claim arising out of a termination for cause shall be made in accordance with Article 12 of this document and calculated in accordance with the provisions of the Contract Documents on Change Orders and claims. No other loss cost, damage, expense, or liability may be claimed, requested, or recovered by Contractor.

13.5 Termination of Contract For Convenience

- 13.5.A SMART may terminate performance of the Work under the Contract Documents in accordance with this clause in whole, or from time to time in part, whenever SMART shall determine that termination is in SMART's best interest. Termination shall be effected by SMART delivering to Contractor notice of termination specifying the extent to which performance of the Work under the Contract Documents is terminated and the effective date of the termination.
- 13.5.B After receiving a notice of termination under paragraph 13.5.A of this Document 00 70 00, and except as otherwise directed by SMART, Contractor shall:
 - 13.5.B.1 Stop Work under the Contract Documents on date and to extent specified in notice of termination;
 - 13.5.B.2 Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete portion of Work under the Contract Documents which is not terminated;
 - 13.5.B.3 Terminate all orders and subcontracts to extent that they relate to performance of Work terminated by the notice of termination;
 - 13.5.B.4 Assign to SMART in manner, at times, and to extent directed by SMART, all right, title, and interest of Contractor under orders and subcontracts so terminated. SMART shall have the right, in its sole discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;
 - 13.5.B.5 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with approval or ratification of SMART to extent SMART may require. SMART's approval or ratification shall be final for purposes of this paragraph 13.5;

- 13.5.B.6 Transfer title to SMART, and deliver in the manner, at the times, and to the extent, if any, directed by SMART, all fabricated or unfabricated parts, Work in process, completed Work, supplies, and all other material produced as part of, or acquired in connection with performance of, Work terminated by the notice of termination, and completed or partially completed drawings, drawings, specifications, information, and other property which, if the Project had been completed, would have been required to be furnished to SMART;
 - 13.5.B.7 Use its best efforts to sell, in manner, at times, to extent, and at price or prices that SMART directs or authorizes, any property of types referred to in paragraph 13.5.B.6 of this Document 00 70 00, but Contractor shall not be required to extend credit to any purchaser and may acquire any such property under conditions prescribed and at price or prices approved by SMART. Proceeds of transfer or disposition shall be applied to reduce payments to be made by SMART to Contractor under the Contract Documents or shall otherwise be credited to the price or cost of Work covered by Contract Documents or paid in such other manner as SMART may direct;
 - 13.5.B.8 Complete performance of the part of the Work which was not terminated by the notice of termination; and
 - 13.5.B.9 Take such action as may be necessary, or as SMART may direct, to protect and preserve all property related to Contract Documents which is in Contractor's possession and in which SMART has or may acquire interest.
- 13.5.C After receipt of a notice of termination under paragraph 13.5.A of this Document 00 70 00, Contractor shall submit to SMART its termination claim, in form and with all certifications required by Article 12 of this Document 00 70 00. Contractor's termination claim shall be submitted promptly, but in no event later than 6 months from effective date of the termination. Contractor and SMART may agree upon the whole or part of the amount or amounts to be paid to Contractor because of a total or partial termination of Work under this paragraph 13.5. If Contractor and SMART fail to agree on the whole amount to be paid to Contractor because of the termination of the Work under this paragraph 13.5, SMART's total liability to Contractor by reason of the termination shall be the total (without duplication of any items) of:
- 13.5.C.1 The reasonable cost to Contractor, without profit, for all Work performed prior to the effective date of the termination, including Work done to secure the Project for termination. Reasonable cost may not exceed the applicable percentage completion values derived from the Progress Schedule and the schedule of values. Deductions shall be made for cost of materials to be retained by Contractor, cost of Work defectively performed, amounts realized by sale of materials, and for other appropriate credits against cost of Work.

Reasonable cost will include reasonable allowance for Project overhead and general administrative overhead not to exceed a total of ten percent of direct costs of such Work. When, in SMART's opinion, the cost of any item of Work is excessively high due to costs incurred to remedy or replace Defective or rejected Work, reasonable cost to be allowed will be the estimated reasonable cost of performing the Work in compliance with requirements of Contract Documents and excessive actual cost shall be disallowed.

- 13.5.C.2 A reasonable allowance for profit on cost of Work performed as determined under paragraph 13.5.C.1 of this Document 00 70 00, provided that Contractor establishes to SMART's satisfaction that Contractor would have made a profit had the Project been completed and provided further that the profit allowed shall not exceed 5 percent of cost.
- 13.5.C.3 Reasonable costs to Contractor of handling material returned to vendors, delivered to SMART or otherwise disposed of as directed by SMART.
- 13.5.C.4 A reasonable allowance for Contractor's internal administrative costs in preparing termination claim.
- 13.5.D Except as provided in this paragraph 13.5.C of this Document 00 70 00, SMART shall not be liable for costs incurred by Contractor or Subcontractors after receipt of a notice of termination. Such non-recoverable costs include, but are not limited to, anticipated profits on Work not performed as of the date of termination, post-termination employee salaries, post-termination general administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting Contractor's Bid, attorney's fees of any type, and all costs relating to prosecution of claim or lawsuit.
- 13.5.E SMART shall have no obligation to pay Contractor under this paragraph 13.5 unless and until Contractor provides SMART with updated and acceptable as-builts and Project Record Documents for Work completed prior to termination.
- 13.5.F In arriving at the amount due Contractor under this clause, there shall be deducted:
 - 13.5.F.1 All unliquidated advances or other payments on account previously made to Contractor which are applicable to the terminated portion of Contract Documents;
 - 13.5.F.2 Any claim which SMART may have against Contractor in connection with Contract Documents; and
 - 13.5.F.3 The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by Contractor or sold under provisions of this paragraph 13.5, and not otherwise recovered by or credited to SMART.

13.6 Contingent Assignment of Subcontracts

- 13.6.A Contractor hereby assigns to SMART each Subcontract for a portion of the Work, provided that:
- 13.6.A.1 The assignment is effective only after SMART's termination of Contractor's right to proceed under the Contract Documents (or portion thereof relating to that Subcontract) pursuant to paragraphs 13.4 or 13.5 of this Document 00 70 00;
 - 13.6.A.2 The assignment is effective only for the Subcontracts which SMART expressly accepts by notifying the Subcontractor in writing;
 - 13.6.A.3 The assignment is subject to the prior rights, if any, of the Surety, obligated by Document 00 61 13.13 (Construction Performance Bond) provided under the Contract Documents, where the Surety exercises its rights to complete the Contract;
 - 13.6.A.4 After the effectiveness of an assignment, Contractor shall, at its sole cost and expense (except as otherwise provided in paragraphs 13.4 or 13.5 of this Document 00 70 00), sign all instruments, and take all actions reasonably requested by SMART to evidence and confirm the effectiveness of the assignment in SMART; and
 - 13.6.A.5 Nothing in this paragraph 13.6 shall modify or limit any of Contractor's obligations to SMART arising from acts or omissions occurring before the effectiveness of any Subcontract assignment, including but not limited to all defense, indemnity and hold-harmless obligations arising from or related to the assigned Subcontract.

13.7 Remedies and Contract Integration

- 13.7.A Subject to Contract Documents provisions regarding Contractor claims, claim review, and claim resolution, and subject to the limitations therein, the exclusive jurisdiction and venue for resolving all claims, counter claims, disputes, and other matters in question between SMART and Contractor arising out of or relating to Contract Documents, any breach thereof or the Project shall be the applicable court of competent jurisdiction located in the State of California, County of Sonoma. All SMART remedies provided in the Contract Documents shall be taken and construed as cumulative and not exclusive; that is, in addition to each and every other remedy herein provided; and in all instances SMART shall have any and all other equitable and legal rights and remedies which it would have according to law.
- 13.7.B The Contract Documents, any Contract Modifications, and Change Orders shall represent the entire and integrated agreement between SMART and Contractor regarding the subject matters hereof and thereof and shall constitute the exclusive statement of the terms of the parties' agreement. The Contract Documents, and any Contract Modifications and Change Orders, shall supersede any and all prior negotiations, representations, or agreements, written or oral, express or implied, that relate in any way to the subject matter of the Contract Documents or written Modifications. SMART and Contractor represent and

agree that, except as otherwise expressly provided in the Contract Documents, they are entering into the Contract Documents and any subsequent written Modification in sole reliance upon the information set forth or referenced in the Contract Documents or Contract Modifications and the parties are not and will not rely on any other information.

13.7.C In any proceeding to enforce the Contract Documents, Contractor and SMART agree that the finder of fact shall receive detailed instructions on the meaning and operation of the Contract Documents, including their conditions, limitations of liability and remedies clauses, claims procedures and any other provisions impacting major defenses and theories of liability of the parties. Detailed findings of fact shall be requested, to verify Contract enforcement.

13.7.D Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions, or other provisions of the Contract Documents at any time shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition, or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.

13.8 Patents

13.8.A Fees or claims for any patented invention, article or arrangement that may be used upon or in any manner connected with performance of the Work or any part thereof shall be included in the Bid price for doing the Work. Contractor shall defend, indemnify and hold harmless SMART and each of its officers, employees, consultants and agents, including, but not limited to, the Board and each SMART's Representative, from all damages, claims for damages, costs or expenses in law or equity, including attorney's fees, arising from or relating to any claim that any article supplied or to be supplied under the Contract Documents infringes on the patent rights, copyright, trade name, trademark, service mark, trade secret or other intellectual property right of any person or persons or that the person or entity supplying the article does not have a lawful right to sell the same. Such costs or expenses for which Contractor agrees to indemnify and hold harmless the above indemnities include but are not limited to any and all license fees, whether such fees are agreed by any indemnitee or ordered by a court or administrative body of any competent jurisdiction.

13.9 Substitution for Patented And Specified Articles

13.9.A Except as noted specifically in Specifications, whenever in Specifications, material or process is designated by patent or proprietary name or by name of manufacturer, such designation shall be deemed to be used for purpose of facilitating description of material and process desired, and shall be deemed to be followed by the words "or Approved Equal" and Contractor may offer any substitute material or process that Contractor considers "equal" in every respect to that so designated and if material or process offered by Contractor is, in opinion of SMART, Equal in every respect to that so designated, its use will be approved. However, Contractor may utilize this right only by timely submitting

Document 00 63 25 (Substitution Request Form) if provided in the bid solicitation documents. A substitution will be approved only if it is a true Equal item in every aspect of its design and quality, including but not limited to its dimensions, weights, service requirements, durability, functioning, impact on contiguous construction elements, overall schedule, and design.

13.10 Interest of Public Officers

13.10.A No representative, officer, or employee of SMART, no member of the governing body of the locality in which the Project is situated, no member of the locality in which SMART was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project, during the tenure of the official or for one year thereafter, shall, as principal, agent, attorney or otherwise, be directly or indirectly interested, in the Contract Documents or the proceeds thereof.

13.11 Limit of Liability

13.11.A Smart, and each of its officers, board members, employees, consultants, and agents including, but not limited to, architect and each other smart representative, shall have no liability to contractor for special, consequential, or incidental damages, except to the limited extent that these contract documents or applicable public contracting statutes may specify their recovery.

13.12 Severability

13.12.A Any provisions or portions thereof of Contract Documents that are prohibited by, unlawful, or unenforceable under any applicable law of any jurisdiction shall as to such jurisdiction be ineffective without affecting other provisions or portions thereof in the Contract Documents.

14 MODIFICATIONS OF CONTRACT DOCUMENTS

14.1 Alterations, Modifications and Force Account Work

14.1.A No modification or deviation from the Drawings and Specifications will be permitted except by written Contract Modification.

14.1.B SMART may, without notice to the sureties, make alterations, deviations, additions to, or deletions from Contract Documents; increase or decrease the quantity of any item or portion of the Work; expand, contract, or otherwise change the Contract Time; delete any item or portion of the Work; and/or require extra Work. Contractor shall perform such Work under applicable provisions of the Contract Documents, unless specifically provided otherwise at the time the change is ordered. In the case of any ordered extra Work, SMART reserves the right to furnish all or portions of associated labor, material, and equipment, which Contractor shall accept and use without payment for costs, markup, profit, or otherwise for such SMART-furnished labor, materials, and equipment.

14.1.C If changes ordered in design, workmanship or materials are of such a nature as to increase or decrease the cost of any part of the Work, the price fixed in the

Contract Documents shall be increased or decreased as set forth in a written Change Order by the amount that Contractor and SMART may agree upon as a reasonable and proper allowance for the cost increase or decrease. If an agreement cannot be reached, then SMART will reach a determination, which shall be final, subject to Contractor's rights under Article 12 of this Document 00 70 00. In all cases Contractor shall perform the changed Work as directed by SMART subject to Contractor's rights under Article 12 of this Document 00 70 00.

- 14.1.D A Change Order will become effective when signed by SMART. If SMART exercises its right to decide disputed issues pertaining to changed Work as set forth in Articles 12 and 14 of this Document 00 70 00, then the resulting Change Order shall be effective when signed by SMART, notwithstanding that Contractor has not signed it.
- 14.1.E Changes not affecting the Contract Time or Contract Sum of the Work, in SMART's discretion, may be set forth in a written RFI-Reply executed by SMART or Architect's Supplemental Instruction (ASI). Execution of such an RFI-Reply or ASI constitutes Contractor's agreement to make the specified change without change to the Contract Sum or the Contract Time.
- 14.1.F Changes or deviations from Contract Documents affecting the Contract Time or Contract Sum of the Work shall not be made without the authority of an effective Change Order or Construction Change Directive as provided in Section 01 25 00 (Clarification and Modification Procedures), except in cases of emergency discussed in Article 15 of this Document 00 70 00.
- 14.1.G Changes in the Work made pursuant to this Article 14 and extensions of Contract Time necessary by reason thereof shall not in any way release the guarantees and warranties given by Contractor pursuant to provisions of the Contract Documents, nor shall such changes in the Work relieve or release the Sureties of bonds executed pursuant to said provisions. The Sureties, in executing such bonds, shall be deemed to have expressly agreed to any such change in the Work and to any extension of time made by reason thereof.
- 14.1.H Procedures for Modifications of Contract Documents and for calculating the cost of extra Work are given in Section 01 25 00 (Clarification and Modification Procedures). Regarding delay and impact costs of any nature, Contractor may not seek delay compensation for on-Site or off-Site costs based on formulas, e.g., "Eichlay" or other formula. Rather, Contractor shall prove actual costs resulting from such delays. If Contractor requests compensation for delay to the construction, then Contractor shall prove and document actual costs plus markup per the cost categories and procedures in Section 01 25 00 (Clarification and Modification Procedures) in order to request, claim or prove compensation for delay.

14.2 Time Allowances

- 14.2.A The Contract Time may only be changed by Change Order or by Contract Modification, and all-time limits stated in the Contract Documents are of the essence of Contract Documents.

- 14.2.B The Contract Time will be adjusted in an amount equal to the time lost or added due to:
 - 14.2.B.1 Changes in the Work ordered by SMART;
 - 14.2.B.2 Acts or neglect by SMART, Architect, any SMART's Representative, utility owners or other contractors performing other work, provided that Contractor has fully and completely performed its responsibilities under the Contract Documents; or
 - 14.2.B.3 Fires, floods, epidemics, abnormal weather conditions beyond the parameters otherwise described or referenced in paragraph 14.4 below, earthquakes, civil or labor disturbances, strikes or acts of God, provided damages resulting therefrom are not the result of Contractor's failure to protect the Work as required by Contract Documents.
- 14.2.C The Contract Time shall not be extended for any cause identified in paragraph 14.2.B above, however, unless:
 - 14.2.C.1 Contractor actually has been prevented from completing any part of the Work within the Contract Time due to delay that is beyond Contractor's control and due to reasons for which Contractor is not responsible (delays attributable to and within the control of a Subcontractor, or its subcontractors, or supplier shall be deemed to be delays within the control of Contractor);
 - 14.2.C.2 A claim for delay is made as provided herein; and
 - 14.2.C.3 Contractor submits a Time Impact Evaluation as required under Section 01 32 16 (Progress Schedules and Reports) that demonstrates actual delay to critical Work activities that actually delay the progress of the Work in the amount of time requested.

14.3 Notice of Delay

- 14.3.A Within seven (7) Days of the beginning of any delay, Contractor shall notify SMART in writing, by submitting a notice of potential claim, of all anticipated delays resulting from the delay event in question. Any request for extension of time shall be accompanied by Contractor's written statement that the adjustment claimed is the entire adjustment to which the claimant is entitled as a result of the occurrence of said event and shall include a written schedule document that demonstrates delay to the critical path using a Time Impact Evaluation as specified in Section 01 32 16 (Progress Schedules and Reports). SMART will determine all claims and adjustments in the Contract Time. No claim for an adjustment in the Contract Time will be valid and such claim will be waived if not submitted in accordance with the requirements of this paragraph 14.3.A.

14.4 Non-Compensable Time Extensions; Adverse Weather Parameters

- 14.4.A Where Contractor is prevented from completing any part of the Work within the Contract Time due to delay beyond the reasonable control of Contractor and SMART, e.g., adverse weather conditions exceeding Contract Documents parameters, earthquakes, Acts of God and epidemics, and acts of other

contractors or utilities. In such cases, an extension of Contract Time, in an amount equal to the time lost due to such delay (without compensation), shall be Contractor's sole and exclusive remedy for such delay. The adverse weather contingency for this Contract is provided in Document 00 73 00 (Supplementary Conditions).

- 14.4.B Delays due to abnormal or adverse weather conditions will not be allowed for weather conditions that fall within the Contract's adverse weather contingency, nor will Contractor be entitled to any extension of Contract Time for any such delays. Contractor shall be entitled to an extension of Contract Time for adverse weather only (i) if the number of workdays of adverse weather, recognize as provided in this paragraph 14.4, exceeds these parameters (ii) Contractor proves that adverse weather actually caused delays to Work that is on the critical path, and (iii) Contractor satisfies the other requirements of this paragraph 14.4.
- 14.4.C In order to qualify as an adverse weather day with respect to the foregoing parameters, daily rainfall must exceed 0.1 of an inch or more at the National Oceanic & Atmospheric Administration weather station identified in Document 00 73 00 (Supplementary Conditions), and Contractor must give SMART written notice of its intent to claim an adverse weather day within one Day of the adverse weather day occurring. Contractor shall at all times employ all available mitigation measures to enable Work to continue.
- 14.4.D Contractor shall include the foregoing rain parameters as in its Progress Schedule as required in Section 01 32 16 (Progress Schedules and Reports). As Work on the critical path is affected by rain, Contractor shall notify SMART and request that the days be moved to the affected activities. Any adverse weather days remaining shall be considered Project float.
- 14.4.E Subject to the other requirements of this paragraph, adverse weather days shall be recognized for the actual number of days Contractor proves it was delayed by adverse weather. For example, and not by way of limitation, if rain exceeding the amount described in paragraph 14.4.C does not in fact delay Contractor's progress on the critical path, then no adverse weather days shall be recognized. Conversely, if Contractor proves that rain exceeding the amount described in paragraph 14.4.C causes delay to Contractor for a period longer than the number of rain days incurred (e.g., if it rains during grading Work), then all such days shall be recognized as adverse weather days.
- 14.4.F Contractor shall take reasonable steps to mitigate potential weather delays, such as dewatering the Site, lime treatment, and covering Work and material that could be affected adversely by weather. Failure to do so shall be cause for SMART to not recognize adverse weather days, where Contractor could have avoided or mitigated the potential delay by exercising reasonable care.

14.5 Compensable Time Extensions

- 14.5.A Contractor may receive a time extension and be compensated for delays caused directly and solely by SMART. Provided Contractor provides proper notice and documentation under Section 01 32 16, such compensation may include

extended field or home office overhead, field supervision, escalation charges, acceleration costs and extended subcontractor costs.

- 14.5.B Contractor shall not be entitled to any time extension or compensation for any delays caused in whole or in part by Contractor's failure to perform its obligations under the Contract Documents, or during periods of delay concurrently caused by Contractor and either SMART or others.
- 14.5.C Contractor shall not be entitled to damages for delay to the Work caused by the following reasons:
 - 14.5.C.1 SMART's right to sequence the Work in a manner which would avoid disruption to SMART's contractors and their subcontractors and SMART's employees, exercised as a result of Contractor's failure to perform its cooperation and coordination responsibilities required by Contract Documents; SMART's enforcement of any government act or regulation; or the provisions of the Contract Documents; and
 - 14.5.C.2 Extensive requests for clarifications to Contract Documents or Contract Modifications thereto, provided such clarifications or Contract Modifications are processed by SMART or its consultants in a reasonable time commensurate with Contract Documents requirements.

14.6 NOT USED

14.7 Differing Site Conditions

- 14.7.A If Contractor encounters underground conditions that exceed the scope of the Work, Contractor shall promptly give SMART written notice of the condition, and shall give such notice before the conditions are disturbed, to include: (i) material that Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law, and is not within the scope of Work ("hazardous waste"); (ii) subsurface or latent physical conditions at the site differing from those indicated by information about the Site made available to Bidders prior to the deadline for submitting Bids, that Contractor did not and could not have known about by performing its required pre-Bid investigations; or (iii) unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for the Contract, that Contractor did not and could not have known about by performing its required pre-Bid investigations.
- 14.7.B SMART shall promptly investigate the underground conditions, and if it finds that (i) the conditions do materially so differ in a manner Contractor did not anticipate and could not have anticipated, or do involve hazardous waste outside the scope of the Work, and (ii) cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, then (iii) SMART shall initiate a change order under the procedures described in the

contract, including but not limited to, issuing either a Request for Proposal or a Construction Change Directive under the procedures described in the Contract Documents, including without limitation Section 01 25 00 (Clarification and Modification Procedures).

- 14.7.C If SMART determines that underground conditions at the Site do not materially so differ in a manner Contractor did not anticipate and could not have anticipated, or do not involve hazardous waste outside the scope of the Work, or do not cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, or for any other reason that that no change in terms of the Contract Documents is justified, SMART will so notify Contractor in writing, stating reasons.
- 14.7.D In the event that a dispute arises between SMART and Contractor whether the conditions do materially so differ, or involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, Contractor shall not be excused from any scheduled completion date provided for by the Contract but shall proceed with all Work to be performed under the Contract. Contractor shall retain any and all rights provided either by the Contract or by law which pertain to the resolution of disputes and protests between contracting parties.
- 14.7.E Contractor shall not be entitled to any adjustment in the Contract Sum or Contract Time regarding claimed hazardous waste or materials, claimed Latent or materially different Site conditions (whether above or below grade) if:
- 14.7.E.1 Contractor knew of the existence of such conditions at the time Contractor submitted its Bid; or
- 14.7.E.2 Contractor should have known of the existence of such conditions at the time Contractor submitted its Bid, or should have learned of such conditions and mitigated their impact, as a result of having complied with the requirements of Contract Documents, including without limitation, the investigation requirements herein at Articles 2 and 10 of Document 00 70 00;
- 14.7.E.3 The information or conditions claimed by Contractor to be Latent or materially different consist of information, conclusions, opinions, or deductions made from underground conditions reports, of the kind that this Document 00 70 00 precludes reliance upon; or
- 14.7.E.4 Contractor was required to give written notice and failed to do so within the time required.
- 14.7.F If, because of a differing site condition as defined herein, Contractor does not agree to continue with Work based on a reasonable belief that it is unsafe, or does not agree to resume Work under special conditions, SMART may order the disputed portion of Work deleted from the Work, or performed by others, or SMART may invoke its right to terminate Contractor's right to proceed under the Contract Documents in whole or in part, for convenience or for cause as the facts may warrant. If Contractor does not agree with SMART's determination of any

adjustment in the Contract Sum or Contract Time as a result, Contractor may make a claim as provided in Article 12 of this Document 00 70 00.

14.8 Change Orders Related to Underground Facilities

- 14.8.A If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated in the materials supplied by SMART or in information on file at USA or is not otherwise reasonably known to Contractor by performing its obligations in Articles 2 and 10 of this Document 00 70 00, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby (and in no event later than seven Days), and prior to performing any Work in connection therewith (except in an emergency as required by Article 15 of this Document 00 70 00), identify the owner of such Underground Facility and give written notice to that owner and to SMART. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- 14.8.B Contractor shall be allowed an increase in the Contract Sum or an extension of the Contract Time, or both, for Underground Facilities either not shown or inaccurately shown in the Contract Documents, the information supplied pursuant to the bidding documents or in information on file at USA, only where the inaccuracy was (i) material and outside of the normal experience on projects of this nature, (ii) was not reasonably inferable from existing information, and (iii) directly results in a material, justifiable and actual increase in the cost of Contractor's work. For example, if surface conditions such as pavement repairs, valve covers, or other markings, indicate the presence of an Underground Facility, or if the Underground Facility could be determined or its cost impact mitigated by performing the obligations in Articles 2 and/or 10 of this Document 00 70 00, then an increase in the Contract Price or an extension of the Contract Time will not be due, even if the Underground Facility was not indicated or was shown at a different place or a different elevation in the Contract Documents, in the information supplied to Contractor pursuant to the bidding documents, or in information on file at USA.
- 14.8.C Main Line and Trunk Line Utilities (Government Code Section 4215). Consistent with Government Code Section 4215, as between SMART and Contractor, SMART will be responsible for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Site only if such utilities are not identified in the Contract Documents or bidding documents. SMART will compensate for the cost of locating and repairing damage not due to Contractor's failure to exercise reasonable care, removing and relocating such main or trunk line utility facilities not indicated in the Contract Documents or bidding documents with reasonable accuracy, and equipment on the Project necessarily idled during such work.

14.9 Value Engineering

14.9.A The contractor is encouraged to develop, prepare, and submit value engineering change proposals voluntarily. SMART shall share any approved value engineering proposals at a rate of 50% of realized savings to the contractor.

15 WORKING CONDITIONS AND PREVAILING WAGES

15.1 Use Of Site/Sanitary Rules

15.1.A All portions of the Work shall be maintained at all times in neat, clean and sanitary condition. Contractor shall furnish toilets for use of Contractor's and Subcontractors' employees on the Site where needed, and their use shall be strictly enforced. All toilets shall be properly secluded from public observation, and shall be located, constructed, and maintained subject to SMART's approval.

15.1.B Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Site and land areas identified in and permitted by Contract Documents and other land and areas permitted by applicable laws and regulations, rights of way, permits and easements or as designated by SMART, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, any improvement located thereon, or to the SMART or occupant thereof resulting from the performance of Work.

15.1.C During the progress of the Work, Contractor shall keep the Site and the Project free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, Contractor shall remove all waste materials, rubbish, and debris from and about the Site as well as all tools, appliances, construction equipment and machinery and surplus materials. Contractor shall leave the premises clean and ready for occupancy by SMART at Substantial Completion of Work. Contractor shall restore to original condition all property not designated for alteration by Contract Documents.

15.1.D Contractor shall not load nor permit any part of any structure or pavement to be loaded in any manner that will endanger the structure or pavement, nor shall Contractor subject any part of Work or adjacent property to stresses or pressures that will endanger it. Contractor shall conduct all necessary existing conditions investigation regarding structural, mechanical, electrical or any other system existing, shall perform Work consistent with such existing conditions, and shall have full responsibility for insufficiencies or damage resulting from insufficiencies of existing systems, equipment, or structures to accommodate performing the Work.

15.2 Protection Of Work, Persons, And Property

15.2.A Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with Work. Contractor shall comply with all safety requirements specified in any safety program established by SMART, or required by state, federal or local laws and ordinances. Contractor

shall be responsible for all damage to Work, property or structures, and all injuries to persons, arising from the performance of Work of the Contract Documents.

- 15.2.B Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- 15.2.C Contractor shall remedy all damage, injury or loss to any property referred to in paragraph 15.2.A of this Document 00 70 00, caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, supplier, or any other person or organization directly or indirectly employed by any of them to perform or furnish any Work or anyone for whose acts any of them may be liable. Contractor's duties and responsibility for safety and for protection of Work shall continue until such time as all the Work is completed and Final Acceptance of the Work. SMART and its agents do not assume any responsibility for collecting any indemnity from any person or persons causing damage to Contractor's Work.
- 15.2.D Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.
- 15.2.E SMART may, at its option, retain such moneys due under the Contract Documents as SMART deems necessary until any and all suits or claims against Contractor for injury to persons or property shall be settled and SMART receives satisfactory evidence to that effect.

15.3 Responsibility For Safety And Health

- 15.3.A Contractor shall ensure that its and each tier of Subcontractors' employees, agents and invitees comply with applicable health and safety laws while at the Site. These laws include the Occupational Safety and Health Act of 1970 and rules and regulations issued pursuant thereto, and SMART's safety regulations as amended from time to time. Contractor shall comply with all SMART directions regarding protective clothing and gear.
- 15.3.B Contractor shall be fully responsible for the safety of its and its Subcontractors' employees, agents and invitees on the Site. Contractor shall notify SMART, in writing, of the existence of hazardous conditions, property or equipment at the Site that are not under Contractor's control. Contractor shall be responsible for taking all the necessary precautions against injury to persons or damage to the property of Contractor, Subcontractors, or persons from recognized hazards until the responsible party corrects the hazard.
- 15.3.C Contractor shall confine all persons acting on its or its Subcontractors' behalf to that portion of the Site where Work under the Contract Documents is to be

performed, SMART-designated routes for ingress and egress thereto, and any other SMART-designated area. Except those routes for ingress and egress over which Contractor has no right of control, within such areas, Contractor shall provide safe means of access to all places at which persons may at any time have occasion to be present.

15.4 Emergencies

15.4.A In emergencies affecting the safety or protection of persons or Work or property at the Site or adjacent thereto, Contractor, without special instruction or authorization from SMART, is obligated to act to prevent threat and damage, injury or loss, until directed otherwise by SMART. Contractor shall give SMART prompt written notice if Contractor believes that any significant changes in Work or variations from Contract Documents have been caused thereby. If SMART determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Change Order or Construction Change Directive will be issued to document the consequences of such action.

15.5 Use of Roadways And Walkways

15.5.A Contractor shall not unnecessarily interfere with use of any roadway, walkway, or other facility for vehicular or pedestrian traffic. Before beginning any interference and only with SMART's prior concurrence, Contractor may provide detour, traffic control, or temporary bridge for traffic to pass around or over the interference, which Contractor shall maintain in satisfactory condition as long as interference continues. Unless otherwise provided in the Contract Documents, Contractor shall bear the cost of these temporary facilities.

15.6 Nondiscrimination

15.6.A No person or entity shall discriminate in the employment of persons upon public works because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sexual preference, or gender of such persons, except as provided in Section 12940 of the Government Code. Every contractor for public works violating the provisions of Section 1735 of the Labor Code is subject to all the penalties imposed for a violation of Chapter 1, Part 7, Division 2 of the Labor Code.

15.7 Prevailing Wages

15.7.A Contractor shall pay to persons performing labor in and about Work provided for in the Contract Documents an amount equal to or more than the general prevailing rate of per diem wages for (i) work of a similar character in the locality in which the Work is performed and (ii) legal holiday and overtime work in said locality. The per diem wages shall be an amount equal to or more than the stipulated rates contained in a schedule that has been ascertained and determined by the Director of the State Department of Industrial Relations and SMART to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this Contract. Contractor shall also

cause a copy of this determination of the prevailing rate of per diem wages to be posted at each Site, in addition to all other job site notices prescribed by regulation. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are available at SMART's Headquarters Office and are deemed included in the Bidding Documents. Upon request, SMART will make copies available to any interested party. Contractor shall post the applicable prevailing wage rates at the Site.

If this project is funded using Federal dollars and there is a discrepancy between the Federal Wage Determination and the California Prevailing Wage determinations, Contractor shall pay the higher rate.

- 15.7.B Contractor shall forfeit, as a penalty to SMART, Fifty Dollars (\$50.00) for each laborer, workman, or mechanic employed in performing labor in and about the Work provided for in the Contract Documents for each Day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any Work done under the Contract Documents by him or her or by any Subcontractor under him or her, in violation of Articles 1 and 2 of Chapter 1 of Part 7 of Division II of the California Labor Code. The sums and amounts which shall be forfeited pursuant to this paragraph 15.7.B and the terms of the Labor Code shall be withheld and retained from payments due to Contractor under the Contract Documents, pursuant to this Document 00 70 00 and the Labor Code, but no sum shall be so withheld, retained, or forfeited except from the final payment without a full investigation by either the State Department of Industrial Relations or by SMART. The Labor Commissioner pursuant to Labor Code Section 1775 shall determine the final amount of forfeiture.
- 15.7.C Contractor shall insert in every subcontract or other arrangement which Contractor may make for performance of Work or labor on Work provided for in the Contract, provision that Subcontractor shall pay persons performing labor or rendering service under subcontract or other arrangement not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed in the Labor Code.
- 15.7.D Where either the Prime Agreement or the subagreement exceeds thirty thousand dollars (\$30,000), the Contractor and all subcontractors under him or her shall comply with all applicable requirements of Labor Code 1777.5, 1777.6, and 1777.7 in the employment of apprentices. Contractors are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, Contractor and subcontractors are advised to contact the Department of Industrial Relations (DIR) Division of Apprenticeship standards website at <https://www.dir.ca.gov/das/> for additional information regarding the employment of apprentices and for the specific journey-to-apprentice ratios for the Work. Contractor is responsible for their compliance

and all their subcontractor's compliance with these requirements. Failure to comply will subject the Contractor and subcontractors to the penalties specified in Labor Code §1777.7.

- 15.7.E Contractor stipulates that it shall comply with all applicable wage and hour laws, including without limitation California Labor Code Sections 1725.5, 1776, 1777, and 1810-1815. Failure to so comply shall constitute a default under this Contract.
- 15.7.F Contractor and Subcontractors must keep accurate payroll records, showing the name, address, social security number, Work classification, straight time and overtime hours worked each Day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the Work of the Contract documents. Each payroll record shall contain or be verified by a written declaration as required by Labor Code Section 1776.
- 15.7.G The payroll records enumerated above must be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor as required by Labor Code Section 1776.
- 15.7.H Contractor shall inform SMART of the location of records enumerated above, including the street address, city and SMART, and shall, within five working Days, provide a notice of a change of location and address.
- 15.7.I Contractor or Subcontractor has 10 Days in which to comply subsequent to receipt of a written notice requesting the records enumerated above. In the event that Contractor or Subcontractor fails to comply with the ten-Day period, he or she shall, as a penalty to SMART on whose behalf the contract is made or awarded, forfeit \$25.00 for each calendar Day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. Contractor is not subject to a penalty assessment pursuant to this subparagraph due to the failure of a Subcontractor to comply with this subparagraph.
- 15.7.J This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor shall require all subcontractors to furnish the records specified in Labor Code section 1776 (e.g., electronic certified payroll records) directly to the Labor Commissioner in a format prescribed by the Labor Commissioner at least monthly.
- 15.7.K Contractor and all Subcontractors shall be registered and qualified to perform public work pursuant to Labor Code section 1725.5 as a condition to engage in the performance of any Work hereunder.
- 15.7.L Contractor shall also deliver certified payrolls to SMART with each Application for Payment as described in Section 01 20 00 (Price and Payment Procedures).

15.8 Environmental Controls

15.8.A Contractor shall comply with all rules, regulations, ordinances, and statutes that apply to any Work performed under the Contract Documents including, without limitation, any toxic, water, and soil pollution controls and air pollution controls specified in Government Code Section 11017. Contractor shall be responsible for insuring that Contractor's Employees, Subcontractors, and the public are protected from exposure to airborne hazards or contaminated water, soil, or other toxic materials used during or generated by activities on the Site or associated with the Project.

15.9 Shoring Safety Plan

15.9.A At least five Days in advance of excavating any trench five feet or more in depth, Contractor shall submit to SMART a detailed plan showing the shoring, bracing and sloping design and other provisions to be made for worker protection from the hazard of caving ground during the excavation, as required by Labor Code Section 6705. A civil or structural engineer registered in California shall prepare and sign any plan that varies from the shoring system standards established by the State Construction Safety Orders.

15.9.B During the course of Work, Contractor shall be responsible for determining where sloping, shoring, and/or bracing is necessary and the adequacy of the design, installation, and maintenance of all shoring and bracing for all excavation, including any excavation less than five feet in depth. Contractor will be solely responsible for any damage or injuries that may result from excavating or trenching. SMART's acceptance of any drawings showing the shoring or bracing design or work schedule shall not relieve Contractor of its responsibilities under this subparagraph.

15.9.C Cal/OSHA Permit. Contractor shall comply with Labor Code 6500 and shall obtain, as applicable, a permit as required by Cal/OSHA for each of the following:

15.9.D Construction of trenches or excavations that are five feet or more in depth and into which a person is required to descend.

15.9.E Construction or demolition of any building, structure, or scaffolding for falsework more than three stories high, or the equivalent height (36 feet).

15.9.F Erection or dismantling of vertical shoring systems more than three stories high, or the equivalent height (36 feet).

15.9.G The underground use of diesel engines in mines or tunnels.

END OF DOCUMENT



SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

ATTACHMENT C
GENERAL REQUIREMENTS

FURNISH & INSTALL
SYSTEM-WIDE PATHWAY WAYFINDING SIGNAGE

CONTRACT NO. PL-BB-24-001

ATTACHMENT C IS ON FILE WITH BOARD CLERK
AND AVAILABLE ON REQUEST



SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

ATTACHMENT D

PHASE 1 - PLACEMENT PLAN

**FURNISH AND INSTALL
SYSTEM-WIDE PATHWAY WAYFINDING SIGNAGE**

CONTRACT NO. PL-BB-24-001

**ATTACHMENT D IS ON FILE WITH BOARD CLERK
AND AVAILABLE ON REQUEST**



SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

ATTACHMENT E

SIGN SCHEDULE

FURNISH & INSTALL

SYSTEM-WIDE PATHWAY WAYFINDING SIGNAGE

CONTRACT NO. PL-BB-24-001

**ATTACHMENT E IS ON FILE WITH BOARD CLERK
AND AVAILABLE ON REQUEST**



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

July 17, 2024

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

SUBJECT: Authorize the General Manager to Award Contract No. OP-SV-24-008 with Clean Solution Services, Inc

Dear Board Members:

RECOMMENDATION:

Authorize the General Manager to Award Contract No. OP-SV-24-008 with Clean Solution Services, Inc. to perform janitorial services at SMART's stations, park and ride lots, and facilities. The initial term of the Agreement is for three years with a not-to-exceed amount of \$440,116. Additionally, authorize the General Manager the approval authority of up to \$325,111 to extend the Agreement for an additional two years.

SUMMARY:

Since the start of passenger service, SMART has contracted with a third party to perform cleaning and janitorial services at our stations, park and ride lots, and office locations. The services are broken up into daily, weekly, and monthly tasks to assist SMART with providing a safe and clean operation for its riders and employees. Services at passenger facilities include daily trash and debris collection, sweeping and leaf blowing, steam cleaning the concrete platforms, cleaning of all fixtures, benches, signage, shelter glass, and card vending machines. General janitorial services at four staff office facilities include restroom cleaning, wiping down surfaces, dusting, emptying garbage, and sweeping. Other services are included on an as-requested basis for window and blind cleaning, and floor stripping, waxing and buffing.

This contract is for an initial term of three years with two, one-year options to extend at SMART's discretion. It also includes servicing expansion stations and park and ride lots.

SMART's existing contract for janitorial services expires on July 31, 2024. In anticipation of this, SMART issued a Request for Proposal (RFP) on May 17, 2024, to procure janitorial services for SMART's stations, park and ride lots, and facilities.

SMART received a total of four responsive, responsible proposals from the following firms:

1. A.J. Janitorial Service
2. Clean Solution Services, Inc.
3. Ogreena
4. Wine Country Ventures

SMART’s Evaluation Committee (“Committee”) reviewed these four proposals using the evaluation criteria listed in the RFP. The Committee evaluated pricing, qualifications, prior experience, and service approach. The Committee identified Clean Solution Services, Inc, as offering the best value for SMART and is recommending them for award.

Staff recommends authorizing the General Manager to Award Contract No. OP-SV-24-008 to Clean Solution Services, Inc. to perform janitorial services at SMART’s stations, park and ride lots, and facilities for an initial term of three years with a not-to-exceed amount of \$440,116. Additionally, authorize the General Manager the approval authority of up to \$325,111 to extend the Agreement for an additional two years.

FISCAL IMPACT: This service is included in the adopted Fiscal Year 2024-25 budget and assumed in subsequent years.

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

Very truly yours,

 /s/
Michael Spurlock
Maintenance of Way Manager

Attachment(s): Clean Solutions Services, Inc., Contract No. OP-SV-24-008

SERVICE AGREEMENT

This agreement (“Agreement”), dated as of August 1, 2024 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District (hereinafter “SMART” or “District”), and Clean Solution Services, Inc. (hereinafter “Service Provider”).

RECITALS

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

WHEREAS, in the judgment of the Board of Directors of SMART or District, it is necessary and desirable to employ the services of Service Provider to provide janitorial and custodial services for SMART’s Stations, Offices, and Park & Ride Lots.

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

AGREEMENT

ARTICLE 1. RECITALS.

Section 1.01 The above Recitals are true and correct.

ARTICLE 2. LIST OF EXHIBITS.

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

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

ARTICLE 3. REQUEST FOR SERVICES.

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

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.
- (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: Jose Echeverria, Rana Husary, Samme Shiheiber.

ARTICLE 5. PAYMENT.

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

following terms:

Section 5.01 Service Provider shall invoice SMART on a monthly basis, detailing the tasks performed pursuant to the Scope of Work 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 \$440,116.00 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 the task(s) performed and the associated rate. 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 Service Provider that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the Service Provider 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.

Section 6.01 The term of this Agreement shall remain in effect until June 30, 2027, 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 Service Provider 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 \$1,000,000 per occurrence, and \$2,000,000 aggregate. Said policy shall include a Railroads CG 24 17 endorsement removing the exclusion of coverage, if applicable, for bodily injury or property damage arising out of operations within 50 feet of any railroad property and affecting any railroad bridge, trestle, tracks, roadbeds, tunnel, underpass or crossing.

Section 9.03 Third Party Fidelity Bond (Janitorial Service Bond). Third Party Fidelity Bond in an amount of \$50,000 for services provided at the office facilities.

Section 9.04 Automobile Insurance. Automobile Liability insurance covering bodily injury and property damage in an amount no less than \$1,000,000 combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles.

Section 9.05 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.

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: Sonoma-Marine Area Rail Transit District
Attn: Michael Spurlock
Maintenance of Way Manager
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
mspurlock@sonomamarintrain.org
707-782-2388

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

If to Service Provider: Clean Solution Services. Inc.
Attn: Jose Echeverria
President and CEO
100 Pine Street, Suite 1250
San Francisco, CA 94111
Jose@cleansolutionservices.com
415-794-6884

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 Licensing Laws. The Service Provider shall comply with the provisions of Chapter 9 Division 3 of the Business and Professions code concerning the licensing of contractors. 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 Contractor 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 16.05 Drug-Free Workplace. Service Provider certifies that it will provide a drug-free workplace in compliance with Government Code §8350-§8357.

Section 16.06 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 16.07 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 16.08 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 16.09 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 16.10 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 16.11 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 16.12 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 16.13 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.

CLEAN SOLUTIONS SERVICES, INC.

By: _____
Jose Echeverria, President and CEO

Date: _____

SONOMA-MARIN AREA RAIL TRANSIT (SMART)

By: _____
Eddy Cumins, General Manger

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-Marin Area Rail Transit District (SMART) is contracting with Clean Solutions Services, Inc. (Service Provider) to provide all labor, supervision, equipment, materials, supplies, tools, and transportation necessary to perform custodial services at SMART's facilities.

Locations of SMART Commuter Rail Stations

Larkspur 600 Larkspur Landing Circle Larkspur, CA 94939	Petaluma North (<u>Expected completion late 2024</u>) 320 Corona Rd Petaluma, CA 94954
San Rafael (2 platforms) 680 3rd Street San Rafael, CA 94901	Cotati (2 platforms) 980 East Cotati Avenue Cotati, CA 94931
Marin Civic Center 3801 Civic Center Drive San Rafael, CA 94903	Rohnert Park 900 Enterprise Drive Rohnert Park, CA 94928
Novato Hamilton 10 Main Gate Road Novato, CA 94949	Santa Rosa Downtown 7 4th Street Santa Rosa, CA 95401
Novato Downtown 695 Grant Avenue Novato, CA 94945	Santa Rosa North 1500 Guerneville Road Santa Rosa, CA 95401
Novato San Marin 7700 Redwood Boulevard Novato, CA 94945	Sonoma County Airport 1130 Airport Blvd. Santa Rosa, CA 95403
Petaluma Downtown 220 Lakeville St. Petaluma, CA 94952	Windsor (<u>Expected completion 2nd Quarter 2025</u>) 464 Emily Rose Circle Windsor, CA 95492

Locations of SMART Park-and-Ride Lots

Larkspur 600 Larkspur Landing Circle Larkspur, CA 94939 (Approx 29,300 Sq Ft)	Novato Hamilton 10 Main Gate Rd Novato, CA 94945 (Approx 64,268 Sq Ft)
Novato San Marin 7700 Redwood Blvd Novato, CA 94945 (Approx 20,200 sq. feet)	Petaluma North (<u>Expected completion mid 2025</u>) 320 Corona Rd Petaluma, CA 94954 (Approx 44,000 Sq Ft /TBD)
Rohnert Park 900 Enterprise Drive Rohnert Park, CA 94928 (Approx 64,268 sq. feet)	Airport 1130 Airport Blvd Santa Rosa, CA 95401 (Approx 27,700 Sq Ft)

Locations of SMART Business Offices

Roblar MOW 105 Roblar Drive Novato, CA 94949-6134 (Approx 1,475 sq. feet)	Fulton Maintenance of Way 1200 River Road Fulton, CA 95439 (Approx 4,200 sq. feet)
Larkspur 600 Larkspur Landing Circle Larkspur, CA 94939 (Approx 410 sq. feet)	Rail Operations Center 3748 Regional Parkway Santa Rosa, CA 95403 (Approx 4,360 sq. feet)

II. Project Management

All work shall be initiated, scheduled, and reviewed by the Manager of Maintenance of Way or designee (hereinafter “SMART Manager”). Work may be initiated in writing or by teleconference. Service Provider’s point of contact is Samme Shiheiber, Project Manager, who can be reached at (925) 518-2309.

The SMART Manager and designated SMART staff shall have access to Service Provider’s online based quality control tracking system called CompuClean. CompuClean may be accessed by computer or by smartphone.

III. Scope of Work

The following services shall be provided at SMART's Commuter Rail Stations and Park-and-Ride Lots:

1) Daily Services (7 Days Per Week)

- a. Trash and Recycling Pick-up. All trash bins shall be emptied daily prior to the start of morning train service and hauled to SMART designated locations:
 - i. Trash and Recycling from Novato San Marin, Novato Hamilton, Downtown Novato, Marin Civic Center, San Rafael and Larkspur stations shall be taken to SMART's Roblar Facility at 105 Roblar Drive, Novato, CA, 94945
 - ii. Trash and Recycling from Petaluma Downtown, Cotati, Rohnert Park, Santa Rosa Downtown, Santa Rosa North, and Sonoma County Airport stations shall be taken to SMART's Rail Operation Center at 3748 Regional Parkway, Santa Rosa, CA, 95403.
- b. Wipe down and clean up any spills on the platforms (includes concrete, benches, and all other fixtures).
- c. Pick up any trash or debris on the platforms.
- d. Service Provider is responsible for providing and replacing garbage bags for stations and park and ride lots during service.

2) Weekly Services

- a. General Cleaning at the Commuter Rail Stations
 - i. Wiping signage pylons, benches, railings, and card vending machines.
 - ii. Sweeping and leaf blowing services at each station.
 - iii. Ensuring all pathways are clear of any obstructions.

3) Monthly Services

- a. Steam cleaning of station platforms - no chemicals shall be used during this service.
- b. Clean the glass at all the shelters.
- c. Trash pickup and sweeping and leaf blowing at the following park and ride lots:

- i. Novato Hamilton (78,400 sq. feet).
- ii. Novato San Marin (20,200 sq. feet).
- iii. Petaluma North (Approx 44,000 sq. feet) (Expected Mid-2025)
- iv. Rohnert Park (64,268 sq. feet).
- v. Larkspur (29,700 sq. feet).
- vi. Airport (27,700 sq. feet).

SMART's Office Facilities:

SMART's Office Facilities shall be cleaned in accordance with the following frequency:

- Rail Operations Center - 3 times per week
- Fulton Maintenance of Way - 2 times per week
- Roblar Maintenance of Way - 2 times per week
- Larkspur Office Trailer – 2 times per week

The exact days and times shall be agreed upon by Service Provider and the SMART Manager during the initiation conference.

Office Cleaning Duties at Each Visit:

- 1. Hard surface floors shall be swept and cleaned with a wet mop.
- 2. Dust countertops, furniture, shelves, all fixtures.
- 3. Spot clean coffee rings and other obvious marks with a treated cloth.
- 4. Empty all wastepaper receptacles and replace all liners.
- 5. Any office furniture moved during cleaning shall be returned to its appropriate position.
- 6. Check all vents and remove cobwebs.
- 7. Spot and wipe down fingerprints and smudges on doors, clean doorknobs, and light switches.
- 8. Remove spot marks on the walls.
- 9. All telephones shall be disinfected.
- 10. Wipe down tables and chairs with treated cloth
- 11. Dust copy machines, including around and behind them.

Bathroom Cleaning Duties at Each Visit:

The Rail Operations Center has 3 bathrooms total.
 Fulton Maintenance of Way (MOW) facility has 1 bathroom.
 Roblar MOW has 2 bathrooms.
 Larkspur office has 1 bathroom.

1. Sink and toilets shall be cleaned and disinfected.
2. Metal fixtures polished.
3. Toilet paper and hand towels restocked, and hand soaps filled.
4. Disinfect the bathroom counters.
5. Clean walls of bathrooms and walls under and around urinals and toilets.
6. Wipe all wall partitions and bathroom partitions.
7. Dust light fixtures and clean top of light fixtures.
8. Clean and dust window ledges and baseboards.
9. Clean any spot marks on walls and doors.
10. Check vents and remove any cobweb.
11. Clean bathroom mirror with disinfectant.
12. Spot and wipe down fingerprints, smudges on doors, doorknobs, and light switches.
13. Empty and wipe down all garbage containers and replace all liners.
14. Sweep floors and wet mop with disinfectant solution.

Breakroom Cleaning at Each Visit:

1. Hard surface floors swept and wet mopped.
2. Empty and wipe down all garbage containers, replace liners.
3. Spot and clean coffee rings and other obvious marks with a treated cloth.
4. Tables, chairs, counters, and sink shall be wiped down with treated cloth.
5. All mirrors cleaned, sink and metal fixtures polished.
6. Restock hand towels and paper cups, fill hand soap dispensers.
7. Dust and wipe counters with disinfectant.
8. Clean cabinet fronts.
9. Clean behind and outside of microwave.
10. Clean vents and remove all cobwebs
11. Clean any spot marks on walls and doors.
11. Clean the wall behind the garbage container as needed.
12. Clean and wipe down fingerprints and smudges on doors, doorknobs and light switches.

Additional Office Facility Services By Request

SMART may request the following additional services to be performed at its office facilities on an as needed basis. These requests will be made in writing and a timeline for service shall be mutually agreed upon.

1. Buffing of floors
2. Dusting and cleaning of blinds with a damp cloth
3. Strip and Wax floors
4. Window cleaning inside and out

Service Standards

The quality of work to be provided under this Agreement must meet the highest standards for janitorial work in a commercial environment.

The Service Provider shall always provide enough qualified personnel necessary to perform all custodial services required in the scope of work. The Service Provider shall provide adequate supervision to ensure that the work performed is completed properly and to SMART's standards. All Service Provider personnel shall be specifically trained and required to use all equipment, chemicals, and products per Original Equipment Manufacturer specifications. All Service Provider personnel shall be uniformed and dressed in a professional manner appropriate for the job and shall always wear the company identification badge.

Service Provider's personnel shall not be permitted on or near SMART's railroad track without the express written permission of the SMART Manager.

All employees shall be professional, courteous, and friendly when interacting with any of the public and agency staff.

Should any employee of the Service Provider appear to the District to be performing the work in an incompetent manner, a written notification shall be documented and presented to the Service Provider's authorized representative requesting correction. If performance of the work is not corrected, the District may require the Service Provider to remove this employee from the work under this Contract.

Additional or Emergency Service Requests

Throughout the year, SMART may require additional cleaning services beyond the standard cleaning frequencies due to planned or emergency events. Service Provider shall work with SMART's Manager to either adjust the scheduled frequency to accommodate the event or SMART will authorize in writing an additional service invoice. Additional service requests during these events may only affect a few facilities, stations, and/or parking lots. SMART will identify in writing the details of the service required at the time of the request.

The Service Provider agrees to prioritize emergency requests and work with SMART to quickly resolve the issue within two hours. SMART shall identify the cleaning service required in writing.

Site Conditions

The Service Provider must report any suspicious behavior, dangerous conditions, graffiti, vandalism, etc. to the SMART Manager or designee immediately.

The Service Provider may encounter unhoused persons while performing the work. Politely ask these individuals to leave the premises and then continue with required tasks.

If any event should escalate and SMART staff are not available, the Service Provider is encouraged to contact local police authorities.

Equipment and Supplies Requirement

The Service Provider shall furnish all equipment and supplies, including trash can liners, required to perform the required services. Industrial or commercial grade equipment is required and must be capable of meeting the janitorial service needs of each area or facility.

Green and Environmentally Safe Practices

All areas shall be cleaned with environmentally safe cleaning materials whenever practical.

Water Requirements

SMART's existing Larkspur Station and Park and Ride Lot have water available. The Rail Operations Center also has water available.

SMART's future Petaluma North Commuter Rail Station and Park-and-Ride Lot will have water available when they come online.

Service Provider shall provide water and equipment for steam cleaning and window washing services at the SMART locations where water is not provided by SMART.

Safety Data Sheet (SDS)

The Service Provider shall maintain and provide the SMART Manager an SDS of all chemicals used for cleaning (no chemicals are to be used for steam cleaning). The Service Provider is responsible for compliance with all state and federal hazardous communications standards. Any chemical spills or leakage, regardless of size, shall be properly and immediately cleaned up by the Service Provider's employees and any damage to SMART facilities corrected at the Service Provider's expense.

All chemical applications and use will be made per manufacturer's specifications on product labels. Any drift and/or chemical claims will be the responsibility of the

Service Provider. All chemical used and areas to be treated on SMART property must be managed by Service Provider who will determine the proper mixture that will be best suited for application.

Medical Waste: SMART will provide Service Provider with one or more "sharps" containers to be used by Service Provider if such medical waste is found on SMART's property. When the medical waste containers are full, they shall be delivered by Service Provider to the Rail Operations Center at the above address.

IV. Timeline for Each Requirement / Task

Service Schedule

The SMART Manager will work with the Service Provider to determine the agreed upon service schedule for daily, weekly and monthly cleaning services.

Station and Park & Ride

Aside from daily trash and recycling pickup, which must occur prior to the first train in the morning, Station and Park & Ride services shall take place during off-peak hours. Peak hours Monday - Friday are defined as:

- 6:30 a.m. through 9:30 a.m.
- 3:30 p.m. through 6:30 p.m.

Cleaning shall take place between 7:00 p.m. and 9:00 a.m. for all weekend work. Weekends are defined as Saturday, Sunday, and SMART recognized Holidays.

Facilities

Cleaning at all office facilities shall take place between 7:00 p.m. and 5:00 a.m.

V. Acceptance Criteria

The SMART Manager shall monitor the Service Provider's performance through scheduled and unscheduled site visits throughout each month. Any deficiencies noted will be documented and immediately forwarded to the Service Provider in writing for correction within the timeframe specified by SMART Manager. If services are performed satisfactorily and any requested corrections made, the SMART Manager will recommend that the invoice shall be submitted for payment.

**EXHIBIT B
SCHEDULE OF RATES**

ITEM NO	DESCRIPTION	FREQUENCY	MONTHLY PRICE (\$)
1	Commuter Rail Station Cleaning Services (12 Stations)	MONTH	\$9,450.82
2	Park & Ride Lots Cleaning Services (5 Park and Ride Lots)	MONTH	\$383.17
3	Rail Operation Center Cleaning Services	MONTH	\$575.19
4	Fulton Maintenance of Way Cleaning Services	MONTH	\$559.11
5	Roblar Maintenance of Way Cleaning Services	MONTH	\$244.72
6	Larkspur Office Trailer Cleaning Service	MONTH	\$122.11

EXPANSION PRICING

Over the term of this contract, SMART may add additional commuter rail stations and park & ride lots. The below pricing is to provide the cleaning services described in the Scope of Work for each additional commuter rail station and park & ride lot.

ITEM NO	DESCRIPTION	FREQUENCY	MONTHLY PRICE (\$)
1	Rail Station Cleaning Services	MONTH	\$547.17
2	Park & Ride Lot Cleaning Services	MONTH	\$73.90

If the start date of the cleaning services for a new station or park & ride lot occurs mid billing cycle, the new services shall be charged on a prorated basis.

ADDITIONAL SERVICE PRICING

Over the term of this contract, SMART may request additional services to be performed.

ITEM NO	DESCRIPTION	UNIT OF MEASURE	COST PER SERVICE (\$)
1	Buffing of Floors	Sq. Ft.	\$0.25 per square foot. Minimum 2,000 sq. ft. per order.
2	Dusting and Cleaning of Blinds	EACH	\$5.00 to remove and clean. Dusting is no charge.
3	Strip and Wax Floors	Sq. Ft.	\$1.00 per square foot. Minimum 1,000 sq. ft. per order.
4	Window Cleaning Inside and Out	EACH	\$5.00 per window cleaning inside and out.
5	Additional Station Cleaning (Monthly Service)	EACH	\$250.00 call out non normal hours
6	Additional Parking Lot Cleaning (Monthly Service)	EACH	\$200.00

The fees shall be fixed for the initial three-year term. Upon completion of the initial three-year term, and prior to the commencement of the optional term of this Agreement, Service Provider may, upon 60 days written notice to SMART, request an increase in the fee equal to the Consumer Price Index, San Francisco Area, as reported by the Bureau of Labor Statistics, U.S. Department of Labor, using the month of April for the most recent year. The maximum increase shall be 5%. If Service Provider does not submit a request at least 60 days before the start of the succeeding Agreement year, Service Provider waives any CPI increase for the optional term.

**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. **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.

5. **Cargo Preference Requirements.**

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

The Contractor agrees to:

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

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

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

6. **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.

7. Civil Rights.

Applicability: All Contracts

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

1. **Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:
 - a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
 - b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, “Equal Employment Opportunity,” September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.
2. **Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
3. **Nondiscrimination on the Basis of Age.** The “Age Discrimination Act of 1975,” as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.
4. **Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third

party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

Civil Rights and Equal Opportunity

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

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S.

Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any Implementing requirements FTA may issue.

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

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

8. 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.

9. 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.”

10. 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.

11. 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.”

12. 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.

13. 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.

14. Disadvantaged Business Enterprise (DBE)

Applicability: All Contracts

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

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

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

The Contractor shall promptly pay any and all subcontractors by an instrument that

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

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

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

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

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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 subcontracts 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.

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

Applicability: All Research Project Contracts

Intellectual Property Rights

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

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

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

For purposes of this Contract, the term “subject data” means recorded information

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

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

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

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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-Marin 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-Marin 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.

32. 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.

33. 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.

34. 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.

35. Geographic Restrictions.

Applicability: All Contracts

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

36. 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.

37. 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.

38. 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.

39. 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.

40. 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.

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

Applicability: All Research and Development Contracts

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

42. 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.

43. 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.