



## **BOARD OF DIRECTORS MEETING**

**April 19, 2023 – 1:30 PM**

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

The SMART Board of Directors Meeting 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/86117249784?pwd=TzBvYW15b1VLejVndFA4enN4M21MZz09>

Webinar ID: 840 2762 6337

Passcode: 742217

### **TELECONFERENCE**

Members of the public wishing to participate via teleconference, can do so by dialing in to the following number the day of the meeting: +1 669 900 6833; Access Code: 840 2762 6337;

Passcode: 742217

### **WATCH THE BOARD MEETING VIA LIVESTREAM**

You are able to view live broadcasts of Board meetings online here:

<http://www.sonomamarintrain.org/watch-board-mtg>

To view the meeting, select “View Event” at the time of the meeting.

### **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 SMART by 5:00 PM on Tuesday, April 18, 2023. Use the following link to submit your comment on agenda items: <https://www.surveymonkey.com/r/SMARTBoardComment>

*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 MEETING AGENDA

## APRIL 19, 2023

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

1. Call to Order
2. Approval of the March 15, 2023 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 – March 2023
- 6b. Approval of Monthly Financial Reports – February 2023
- 6c. Authorize the General Manager to Execute Contract Amendment No. 2 with Golden Five, LLC in an amount of \$30,000 not- to- exceed \$224,600

### Regular Calendar

7. Review and approve Board Resolution No. 2023-12, Budget Amendment for Freight for Fiscal Year 2022-23 – *Presented by Heather McKillop*
8. Authorize the General Manager to execute Contract No. OP-SV-22-011 with Code 3 Entertainment Services dba Code 3 Transportation for the provision of Microtransit Operator Services in an amount not-to-exceed amount of \$1,133,506 - *Presented by Emily Betts*
9. Approve a Resolution to Extend the Suspension of Parking Fees during daytime hours and allow overnight parking for a nominal fee – *Presented by Heather McKillop*
10. Accept the Annual Report for Fiscal Year 2021-22 – *Presented by Heather McKillop*
11. Approve a Resolution to Extend the Reduction of Fares through June 30, 2024; Reduce the 31-day pass to \$117.00 – *Presented by Heather McKillop*
12. Closed Session - Conference with Labor Negotiator General Manager Cumins pursuant to California Government Code Section 54957.6  
*Agency Designated Representative: General Manager*  
*Represented Employees: Operating Engineers Local No. 3*
13. Report Out Closed Session
14. Next Regular Meeting of the Board of Directors, May 17, 2023 – 1:30 PM - 5401 Old Redwood Highway, 1<sup>st</sup> Floor, Petaluma, CA 94954
14. Adjournment

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DISABLED ACCOMMODATIONS: Upon request, SMART will provide for written agenda materials in appropriate alternative formats, or disability-related modification or accommodation, to enable individuals with disabilities to participate in and provide comments at/related to public meetings. Please submit a request, including your name, phone number and/or email address, and a description of the modification, accommodation, service, or alternative

format requested at least two (2) days before the meeting. Requests should be emailed to *Leticia Rosas, Clerk of the Board* at [lrosas@sonomamarintrain.org](mailto:lrosas@sonomamarintrain.org) or submitted by phone at (707) 794-3072. Requests made by mail SMART's, 5401 Old Redwood Highway, Suite 200, Petaluma, CA 94954 must be received at least two days before the meeting. Requests will be granted whenever possible and resolved in favor of accessibility.



**BOARD OF DIRECTORS  
REGULAR MEETING MINUTES**

**March 15, 2023 – 1:30 PM**

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

1. Call to Order

Chair Rabbitt called the meeting to order at 1:33pm. Directors Bagby, Colin, Coursey, Fudge, Garbarino, Lucan, Pahre, Paulson, Rogers and Sackett were present.

Director Bagby is unable to attend in person due to acute illness and is requesting to participate remotely via Zoom.

**MOTION:** Director Rogers moved approval for Director Bagby to participate remotely. Director Lucan second. The motion carried 11-0.

2. Approval of the February 15, 2023, Board Meeting Minutes

**MOTION:** Director Lucan moved approval of February 15, 2023; Board Meeting Minutes as presented. Director Garbarino second. The motion carried 11-0

3. Elections of Chairperson and Vice-Chairperson for Two (2) Year Terms – *Presented by Chair Rabbitt*

Chair Rabbitt asked the Board members for Chair and Vice Chair nominations.

Director Fudge nominated Director Lucan for Chair. Director Roger second. ***The motion carried 11-0.***

Director Rogers nominated Director Bagby for Vice-Chair. Director Fudge second. ***The motion carried 11-0.***



#### 4. Board Members Announcements

Director Lucan stated that on March 14, 2023, the Novato City Council appointed Rachel Farac as the Commissioner on the Transportation Authority of Marin Board. She will be recommended for appointment to the SMART Board of Directors on March 23, 2023.

#### 5. General Manager's Report

General Manager Cumins provided a brief overview on the following:

- Emergency Bridge Repair (Update)
- Ridership
- Pathway Wayfinding
- 3-Day Commute Monthly Pass
- Speaking Engagements
- Transit Employee Appreciation Day
- Questions

##### Emergency Bridge Repair (Update)

- On November 2, 2022, the Board of Directors approved an emergency contract with Koppers Railroad Structures, Inc. and Resolution to repair the Brazos Branch Bridge.
- As required by the Public Contract Code, the Board of Directors must review the action item at its regular scheduled meetings until the action is completed.
- The repairs on this project were completed on March 10, 2023.
- No further updates are required in the future.

##### Ridership

- Ridership for February was 49,724
- February 2023 is up 19% from January 2023
- Fiscal Year 2023 is up 93% vs. Fiscal Year 2022
- March Average Weekday ridership to date: 2,030
- Ridership is down 5% from February 2023
- Ridership is up 46% over March 2022
- At 86% of pre-COVID (March 2019)

##### Pathway Wayfinding

- SMART issued a Request for Proposal for design of Wayfinding System Plan
- Goals for the Wayfinding program include:
  - Facilitate connections between pathway, SMART stations, and surrounding communities
  - Support first and last mile connections
  - Establish branding and placemaking for both the SMART Pathway and the Great Redwood Trail
- SMART anticipates awarding a contract in April 2023
- Complete planning phase in Fall 2023
- Install Wayfinding signage Fiscal Year 2024

### 3-Day Commute Monthly Pass

- The Board asked staff to research and establish a monthly pass that reflects a 3-day commute
- The current monthly pass rates are based on riders traveling **5 days** per week
- Post-pandemic has shifted with many employees only commuting **2-4 days** per week
- The current monthly pass rate: **\$135**; with discounted fares for youth, seniors, and disabled riders paying \$67.50 per month
- The new rate based on **3 days per week**, for 3 zones rate: **\$117** (\$58.50 for discounted riders)
- Goals:
  - Price the monthly pass to more accurately reflect post-pandemic rider behavior
  - Offer better value product for riders
  - Incentivize riders to use SMART for more trips
  - Boost ridership
- Fiscal impact: Zero increase in pass sales (\$40,000 revenue loss)

### Speaking Engagements

General Manager Cumins participated in the following speaking engagements.

- San Rafael Rotary Club – February 27, 2023
- Friends of SMART - March 1, 2023
- League of Women Voters - March 6, 2023

He has been invited to participate at the following:

- San Rafael Chamber Governmental Affairs Committee - March 21, 2023
- North Bay Leadership Council - March 23, 2023
- Good Morning Healdsburg - April 6, 2023

### Transit Employee Appreciation Day Video

General Manager Cumins stated that SMART is celebrating National Transit Employee Appreciation Day on Friday, March 17<sup>th</sup>, the official day is Saturday, March 18<sup>th</sup>. Transit agencies are celebrating this week the hard work and dedication of transit workers who keep our cities moving whether it's bus, train, ferry, or any other mode of transportation. Transit employees ensure people get to where they need to go safely and on time. He acknowledged the following: train engineers, conductors, freight workers, dispatch crews, vehicle maintenance workers, signal technicians, bridge tenders and countless others who work around the clock to keep our trains moving. On behalf of the SMART leadership team, he thanked all of the employees for their commitment to SMART's mission and dedication to our customers. To celebrate he shared a video.

### Comments

Director Sackett asked if SMART was working with Marin County Parks Department on Wayfinding. General Manager Cumins responded yes.

Director Coursey asked if SMART has had any maintenance issues resulting from rain or flooding. General Manager Cumins responded that SMART had experienced some impacts due to weather conditions, including a slow order issued due to flooding in San Rafael. Also, high winds broke three gate arms in San Rafael, and the Schellville Freight Depot had flooding. Director Coursey asked what happens when a gate arm breaks. General Manager Cumins responded that the trains have to be flagged through the railroad crossing. Director Coursey also stated that he liked the 3-day pass.

Director Paulson asked what percentage of ridership utilized the 5-day pass and what the trend is. Chief Financial Officer McKillop stated that SMART saw a big increase in the fall 2022, and since then we've seen a steady decline, going from an average of 275 per month to an average of 224 per month. Director Paulson asked for clarification if the \$40,000 per year revenue loss is based on the average of 224 per month. Chief Financial Officer McKillop confirmed the amount and it's the worst-case scenario.

#### 6. Public Comment on Non-Agenda Items

Guido Boccaleoni stated he supports the Jennings Avenue overcrossing and asked for an update. General Manager Cumins responded that SMART will continue to work with the City of Santa Rosa on the Jennings Avenue process. Mr. Boccaleoni said he has some ideas that he would like to share that would benefit the train in Petaluma. Chair Rabbitt responded that he would be happy to meet and discuss those ideas.

Mike Pechner presented remarks from Allen Hemphill regarding rails and trails who cannot attend the meeting. He will email the Board the comments. Mr. Hemphill has the following vision: 1) have world class trail next to the railroad; 2) Reduce greenhouse gas in the carbon footprint along the Hwy 101 corridor; and 3) Continue excursion service from Healdsburg to Willits. He also said there are 24 customers who want to return to rail service who have been served by NWPCo.

Richard Brand stated he supports Mr. Pechner's comments and Allen Hemphill's ideas. The Great Redwood Trail people would like to do an abandonment of the existing right of way from Willits to Cloverdale. This would eliminate the possibility of having a trail along the rail. He suggested that the Board support the holding up of this issue of abandonment and urged the support of Mr. Hemphill ideas.

Chair Rabbitt stated that the Board did receive correspondence regarding the Great Redwood Trail.

District Counsel stated that SMART is not the common carrier beyond Cloverdale.

Director Rogers believes when you do rail banking, you're not precluding the future use of rail if something comes forward that's viable. It allows for multiple uses to move forward simultaneously, as well as preserving the space and the banking of it for future generations.

7. Consent

- a. Accept Monthly Ridership Report – February 2023
- b. Approval of Monthly Financial Reports – January 2023
- c. ~~Determine there is a continued need for emergency action and continue to approve contract No. FR-ER-22-001 for emergency repairs to the Timber Trestle Bridge at Railroad Slough, MP B38.97, for a total contract amount not to exceed \$425,000 -~~  
*Work is completed and no further action is required – Removed from Consent Calendar*

Chair Rabbitt stated that the emergency work on the Timber Trestle Bridge has been completed and no further action is required. He asked the Board and the public for public comments on consent items 7a and 7b.

**MOTION:** Director Fudge moved approval of the Consent Agenda items 7a and 7b as presented. Director Garbarino second. The motion carried 11-0.

8. Planning for the Future – Freight (Discussion Only) - *Presented by General Manager Cumins*

General Manger Cumins provided a PowerPoint presentation, which is located on SMART's website. Highlights include:

*Planning for the Future – Extension*

- Planning for the Future Model
- SMART House
- Listening Session Results Completed in April 2022
- Listening Sessions – Top 5 themes
  - Build new sidings to industrial sites focusing on lumber, beer, wine, cement, and aggregates
  - Expand SMART's freight service territory
  - Market the advantages of shipping by rail
  - Create (public/private) partnerships with businesses, including partnerships with local large bulk producers like wineries and farmers to help ship goods faster.
  - Upgrade the existing line to Cloverdale and Willits
- Listening Sessions
  - Freight Opposition
- SMART Freight Service Map
- Operation of Freight Service
  - Two round trips to Petaluma customers after revenue passenger service
  - Two round trips to California Northern RR to receive and deliver rail cars to and from the interchange
  - Weekly track inspection to comply with FRA requirements
  - Weekly locomotive servicing (fueling and sanding)
  - Weekly track repairs and maintenance
  - Monthly on-track equipment servicing and repairs
- Freight Challenges

- State of Good Repair
- Flooding
- Budget
- Freight Accomplishments
  - Surfaced 2 miles of track; cleared 23 miles of brush on Brazos Jct. Subdivision
  - Repaired Bridge at MP-B43.99
  - Rebuilt 100 feet of track in front of the Schellville Depot
  - Repaired all January 2023 storm related damages
  - Repaired Railroad Slough Bridge
  - Completed one year of freight service on March 1, 2023
  - Caltrans Rail Division conducting rail service plan study along existing alignment in 2023
- Freight Financials
  - Fiscal Year 2023 Freight Budget
  - Fiscal Year 2024 Operations Revenue
  - Fiscal Year 2024 Operations Expenditures
  - Future Capital/State of Good Repair Requirements
- Potential Goals/ Strategies
  - Increase annual revenue by \$500K+
  - Decrease expenditures by \$100K
  - Secure funding for capital/SGR improvements (\$8.2M)
  - Market freight and storage opportunities at SMART
  - Leverage storage track at Schellville and Burdell
  - Promote transload opportunities at Victory Station (Schellville)
  - Acquire new business
  - Examine freight tariffs and consider increasing fees
  - Reduce car hire fees (\$62K in FY23)
  - Manage maintenance requirements

### Comments

Chair Rabbitt stated that the previous railroad was used for storage instead of hauling railroad. He asked for clarification on the amount for leases. General Manager Cumins responded that the funds are for people leasing SMART's property and not related to the storage of railcars. Staff is working hard to secure storage opportunities.

Director Lucan stated that the cost for Spurs can be a high expense for business. He asked how SMART can assist businesses with the cost of the spurs. General Manager Cumins responded that there are potential opportunities that could be considered. Director Lucan stated that perhaps SMART could consider loan agreement opportunities to businesses.

Director Rogers asked if there are available spurs along the line and what is the cost. Chief Engineer Gamlen responded that there are existing spurs that have been used and could be used in the future. As the railroad is rebuilt the spurs and switches are also rebuilt to connect to our train control system and the cost adds up quickly.

Director Fudge stated that north of Santa Rosa there are potential customers that haven't said that they would be rail, but they would fit perfectly. As these projects percolate, she will inform SMART staff.

Director Coursey asked if there is any opportunity to retro fit locomotives to Tier 4 instead of replacement. General Manager Cumins responded that there is a level of opportunity, however not much savings. It is a challenge to replace the locomotive engine based on the Tier 4 requirements. By 2035, locomotives need to be at Tier 4 and by 2042 they need to be at zero emission. Director Coursey recalls that the goal was to serve Cloverdale to Willits, and it wonders if SMART should be more productive in protecting the corridor. He asked how close of contact is SMART keeping with the Great Redwood Trail Agency on our plans for the future. General Manager Cumins responded that he has reached out to the Executive Director to have a conversation. The direction given by the Board to date is that SMART's area of responsibility is to the Mendocino County line. Director Coursey asked if there are opportunities to bring freight to Willits that would add passengers to/from Cloverdale. General Manager Cumins responded that it is a substantial investment in that railroad going north, which will take a lot of customers and it is a risk to get freight to Willits.

Director Colin stated that she was not on the Board when Freight came to SMART. She is focusing on the numbers that were presented. She asked if there is any possibility of getting state and federal funding. General Manager Cumins responded yes. SMART received \$4M from the State to purchase the railroad and for repairs. Director Colins suggested having more financial information like scenarios, assumptions and challenges in the next 5 years and 10 years to provide more input.

Director Paulson stated that he is also a new Board member to the Freight conversation. He asked how long the deferred maintenance can be sustained, if SMART needs to continue to minimize expenses due to lack of revenue. General Manager Cumins stated that when you defer capital projects, it increases your operating budget. We have one year to close the gap, otherwise, unless additional funds come in, we have some challenges.

Director Rogers stated that one of the major selling points was that under Federal rail law if SMART didn't take ownership of the freight rights along the right of way somebody else could. While there is a deficit, there's also the opportunity cost of not having somebody else use our own rail and the coordinating costs, as well as the complications that come from that as well. We felt like owning our own space and being the ones to operate it was better than the alternative.

Director Sackett asked for staffing clarification. General Manager Cumins responded that Jon Kerruish is SMART's Freight Manager. He came from the railroad industry and had a lot of contacts. He has had several conversations with different opportunities that are available. Director Sackett asked what the Board can do to help. General Manager Cumins responded that the Board needs to be open to various business opportunities.

Director Garbarino stated that there was a rail haul of trash up from the eastern portion of Sonoma and Napa up the I5 corridors. She will be happy to start those discussions again.

Chair Rabbitt stated that there's 24 customers in Willits and apparently there are various customers that are not being reached out to. He asked about the business outreach that has taken place to date. There is a lot of interest in rail, but there are fewer contracts for hauling in rail. In Tracy there are huge warehouses, we don't have anything of that scale in this County. General Manager Cumins stated that it is not easy bringing in customers. We need organizations and there are opportunities, however we need to find customers.

Director Lucan stated that SMART inherited the LPG storage tanks and asked if SMART had a specific policy regarding LPG tanks. General Manager Cumins responded that the Board provided direction to remove the LPG storage tanks in June 2022. SMART does receive a lot of phone calls for LPG storage. Director Lucan suggested that in the future the Board can set up a subcommittee to discuss options. Perhaps there are certain parameters in working with the community to help them understand the parameters of storing tanks.

Director Garbarino stated that her industry is looking at carb regulations, and what dynamic changes that's going to bring to our ability to haul. Also, three truckloads going into one rail car might be a carbon offset for another industry that needs to adhere to the same regulation. We could be hauling compost back to the agricultural industry from the same place that the trash would be going to as well. General Manager Cumins responded that SMART needs to haul in both directions.

Richard Brand stated there are customers in Windsor. There are two existing spurs at Industrial Park, which he has provided information to General Manager Cumins and Freight Manager Kerruish. Kendall Jackson is near the tracks, and warehouses in Napa County. Also Aal Northern is shipping box cars of wine out of that area. There is a freight opportunity and storage tanks are going to have to be redesigned and further protected. The safety issue may drive the opportunity for SMART to store tank cars in the future.

Jack Swearengen stated that an engineering analysis of all the alternatives of all opportunities, and a detailed study, an estimate of what it would take to rebuild the line north to Willits is needed. We need to look at the big picture. When we talk about freight we're taking trucks off roads, and that's good for emissions. The studies must be multi-dimensional, with benefit cost and indirect costs.

Mike Pechner stated that he worked for John Williams from 2009 until the end. There are valuable storage fees from oil companies. The movement and storage of LPG cars are very careful, there has never been an incident or derailment of those cars. The constituents in the Sonoma Valley area were misinformed and the Board took the action to remove that very valuable income. He provided some ideas on how to reduce the budget.

Lastly, Chair Rabbitt stated he appreciates the work, appreciates the comments and the passion and a complete confidence in staff that we are out there doing the right things, and we are talking and working with the correct people.

Chair Rabbitt adjourned the Board to Closed Session at 2:58pm on the following:

9. Closed Session
  - a. Conference with Legal Counsel regarding existing litigation pursuant to California Government Code Section 54956.9(a); Number of cases: Two (2) cases: Filemon Hernandez, et al. v. Sonoma-Marín Area Rail Transit District (SMART) – United States District Court for the Northern District of California - CIV No. 4:21-cv-01782; and Dennis Muelrath, et al. v. Sonoma-Marín Area Rail Transit District -- Superior Court of California, County of Sonoma - SCV-271787
  - b. Conference with Labor Negotiator Eddy Cumins, General Manager pursuant to Government Code Section 54957.6  
*Agency Designated Representative:* General Manager  
*Represented Employees:* Operating Engineers Local No. 3
10. Report Out Closed Session  
District Counsel Lyons reported out of Closed Session at 4:14pm on the following:
  - a. Conference with Legal Counsel regarding existing litigation pursuant to California Government Code Section 54956.9(a); Number of cases: Two (2) cases: Filemon Hernandez, et al. v. Sonoma-Marín Area Rail Transit District (SMART) – United States District Court for the Northern District of California - CIV No. 4:21-cv-01782; and Dennis Muelrath, et al. v. Sonoma-Marín Area Rail Transit District -- Superior Court of California, County of Sonoma - SCV-271787  
Report Out: Direction given to staff
  - b. Conference with Labor Negotiator Eddy Cumins, General Manager pursuant to Government Code Section 54957.6  
*Agency Designated Representative:* General Manager  
*Represented Employees:* Operating Engineers Local No. 3  
Report Out: Direction given to staff
11. Next Regular Meeting of the Board of Directors, April 19, 2023 – 1:30 PM - 5401 Old Redwood Highway, 1<sup>st</sup> Floor, Petaluma, CA 94954
12. Adjournment - Meeting adjourned at 4:16pm.

Respectfully submitted,

Leticia Rosas  
Clerk of the Board

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





**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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April 19, 2023

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

**SUBJECT:** Monthly Ridership Report – March 2023

Dear Board Members:

**RECOMMENDATIONS:** Accept Monthly Ridership Report – March 2023

**SUMMARY:**

We are presenting the monthly ridership report for activity for the month of March 2023. 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 now 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. The report also shows progress so far in the Fiscal Year compared to the same time in the last Fiscal Year, to enable tracking of riders relative to budget expectations. These reports also note relevant details associated with fare program discount usage and trends in riders bringing bicycles onboard.

SMART's ridership data through March 2023 is posted on the SMART Ridership website (<http://sonomamarintrain.org/RidershipReports>).

**FISCAL IMPACT:** None

**REVIEWED BY:** [ x ] Finance \_\_\_\_\_/s/\_\_\_\_\_

[ x ] Counsel \_\_\_\_\_/s/\_\_\_\_\_

Respectfully,

/s/  
Emily Betts  
Principal Planner

Attachment(s): Monthly Ridership Report – March 2023

## MARCH 2023 SMART RIDERSHIP REPORT

SMART Ridership Report

April 19, 2023

Page 1 of 2

March 2023 saw a slight decrease in average weekday ridership at 2,049, down 4% from the previous month; ridership was impacted by the ongoing rains and initial school spring breaks. Total March ridership was 53,622, up 52% over last March, and at 94% of pre-COVID boardings (March 2019). Year to date, FY23 has seen 78% ridership recovery, compared with the same months pre-COVID.

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.

The tables below present data for March 2022 and 2023, year-over-year. Ridership for the fiscal year to date is up 87% over the same time period for FY22.

FISCAL YEAR-TO-DATE (JUL - MAR)	Fiscal Year 2022	Fiscal Year 2023	% Change
Ridership	239,890	448,970	87%
Fare Payments (Clipper + App Only)	220,059	372,846	69%
Average Weekday Ridership	1,113	1,993	79%
Average Saturday/Holiday Ridership	645	956	48%
Average Sunday Ridership	0	787	N/A
Bicycles	36,580	59,658	63%
Mobility Devices	1,064	1,263	19%

Bicycles on board are up 12% over last March and passengers boarding with mobility devices are down 23%. In March, 12% of riders brought bikes on board the train, down from an average of 18% during the summer months.

MONTHLY TOTALS YEAR-OVER-YEAR	MAR 2022	MAR 2023	% Change
Ridership	35,291	53,622	52%
Fare Payments (Clipper + App Only)	33,036	43,420	31%
Average Weekday Ridership	1,388	2,049	48%
Average Saturday Ridership	840	872	4%
Average Sunday Ridership	0	751	N/A
Bicycles	5,616	6,311	12%
Mobility Devices	144	111	-23%

# MARCH 2023 SMART RIDERSHIP REPORT

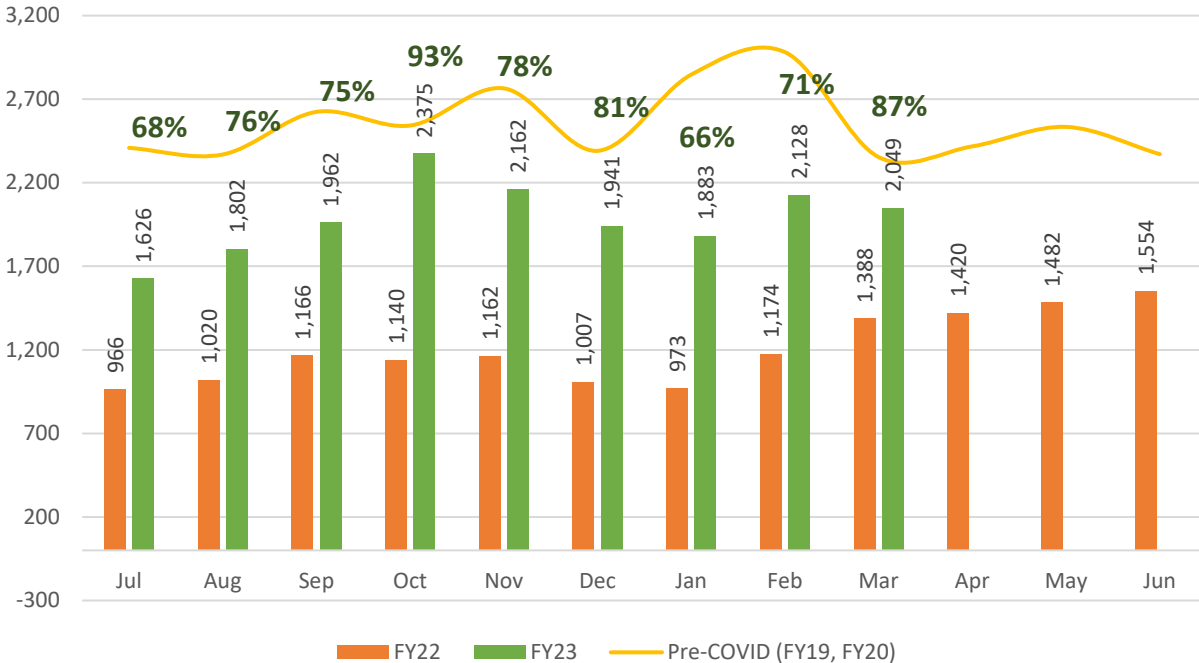
SMART Ridership Report

April 19, 2023

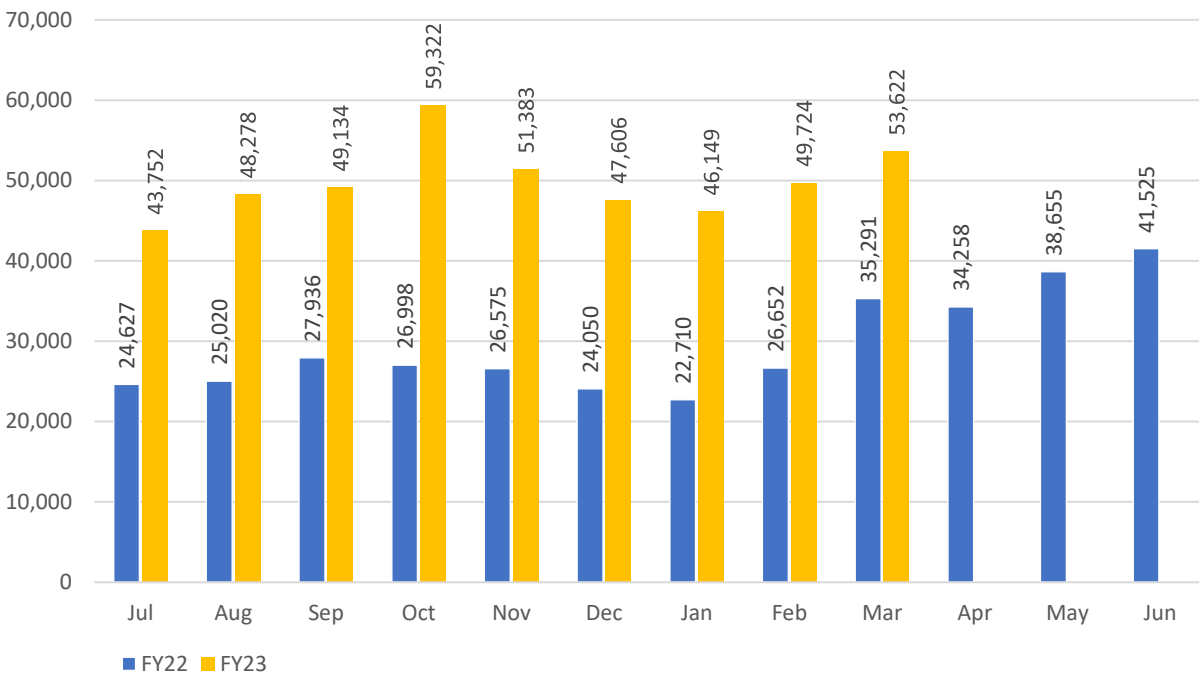
Page 2 of 2

The following charts compare the average weekday ridership and monthly totals for FY22-FY23.

## SMART Average Weekday Ridership



## SMART Monthly Ridership (FY22 v FY23)





**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

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Marin County Council of Mayors and  
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**David Rabbitt**  
Sonoma County Board of Supervisors

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

**Mary Sackett**  
Marin County Board of Supervisors

**Eddy Cumins**  
General Manager

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

April 19, 2023

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

**SUBJECT:** Monthly Financial Status

Dear Board Members:

**RECOMMENDATION:** Approve Monthly Financial Reports – February 2023

**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 July 2022 – February 2023. 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 four 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. In addition, we are including more extensive information on our capital program.

We have also included information regarding SMART's investment policy, where our funds are being held, and how much is currently being held. In addition, we have shown the current obligations, reserves, and fund balance requirements for FY 2022-23.

Sincerely,

/s/

Heather McKillop  
Chief Financial Officer

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



## MONTHLY FINANCIAL STATUS

FEBRUARY 2023

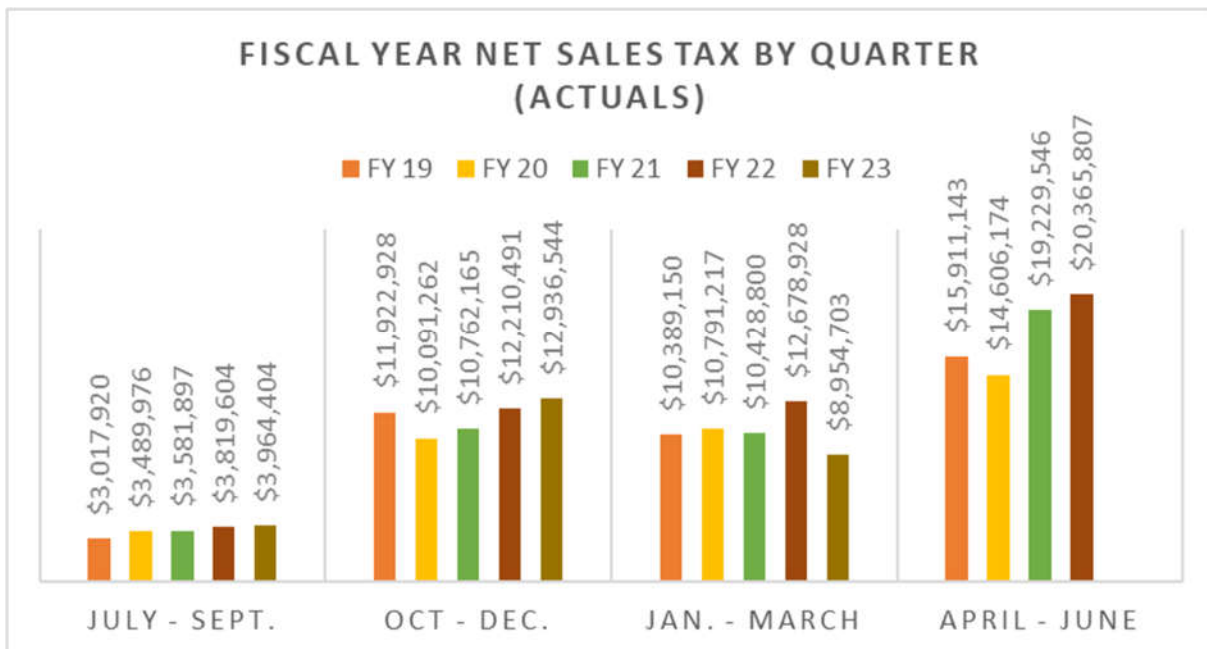
### PASSENGER REVENUES

	FY 2022-23 Approved Budget	Actual	Amount Over/ Under Budget	Comments
<b>Revenues</b>				
<b>Passenger Rail</b>				
Sales/Use Taxes	\$ 50,190,000	\$ 25,855,651	\$ (24,334,349)	Sales Taxes are recorded when received not when earned
Interest and Lease Earnings	\$ 816,631	\$ 858,001	\$ 41,370	Leases renew throughout the year
Miscellaneous Revenue	\$ 145,000	\$ 131,932	\$ (13,068)	
Passenger Fares	\$ 1,600,000	\$ 1,092,651	\$ (507,349)	
State Grants	\$ 12,089,233	\$ 4,700,336	\$ (7,388,897)	State grants are received throughout the year
Charges For Services	\$ 28,325	\$ 22,383	\$ (5,942)	
Federal Funds (Non-COVID Relief)	\$ 5,034,529	\$ 1,866,113	\$ (3,168,416)	Federal funds are received on a reimbursable basis. Funds need to be expended before they can be requested.
Federal Funds (COVID)	\$ 7,507,797	\$ 6,045,635	\$ (1,462,162)	Federal funds are received on a reimbursable basis. Funds need to be expended before they can be requested.
Other Governments	\$ 1,519,892	\$ 30,022	\$ (1,489,870)	
<b>Passenger Rail Subtotal</b>	<b>\$ 78,931,407</b>	<b>\$ 40,602,724</b>	<b>\$ (38,328,683)</b>	

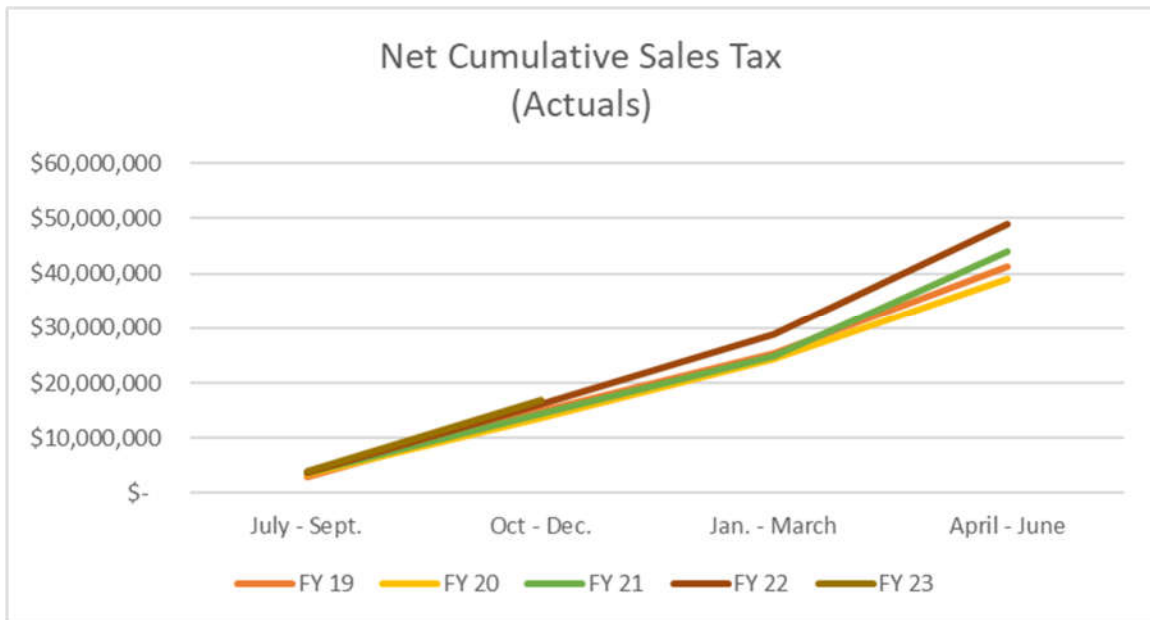
**Measure Q Sales Tax  
Fiscal Year (FY) 2022/2023**

Time Period	July - Sept.	Oct - Dec.	Jan. - March	April - June
Forecasted FY 23 Budget	\$ 4,017,856	\$ 12,844,262	\$ 13,337,013	\$ 20,890,870
Actual	\$ 3,964,404	\$ 12,936,544	\$ 8,954,703	
Difference	\$ (53,452)	\$ 92,282	\$ (4,382,310)	

**Fiscal Year 2019-2023 Net Sales Tax Comparison  
(by Quarter)**



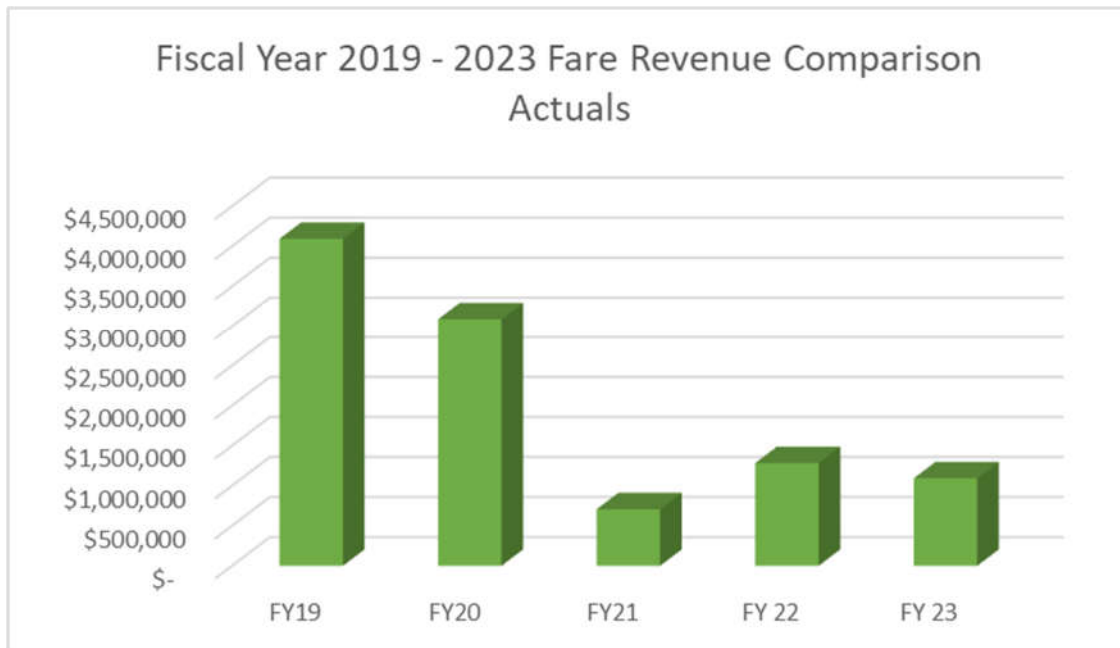
### Fiscal Year 2019-2023 Net Cumulative Sales Tax Comparison



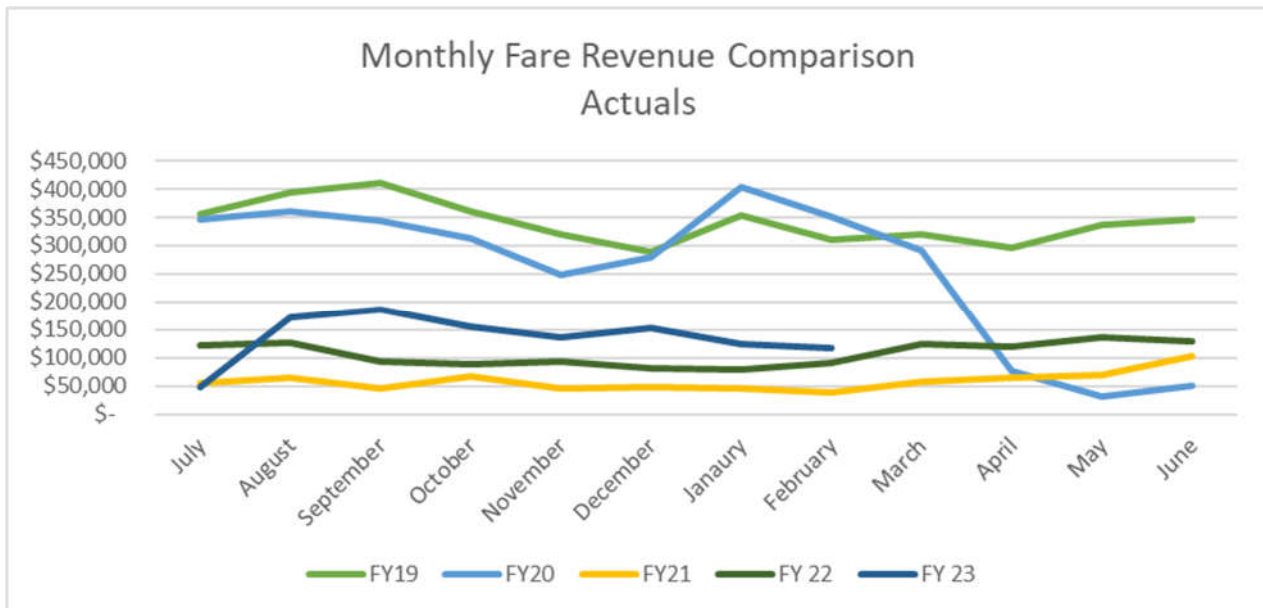
Note: Sales Taxes are recorded when received not when earned.



### Fiscal Year 2019-2023 Fare Revenue Comparison



### Fiscal Year 2019-2023 Monthly Fare Revenue Comparison



## PASSENGER EXPENDITURES

	FY 2022-23 Approved Budget	Actual	Amount Over/ Under Budget
<b>Passenger Expenditures</b>			
<b>Administration</b>			
Salaries & Benefits	\$ 5,727,768	\$ 3,249,086	\$ (2,478,682)
Services & Supplies	\$ 10,588,992	\$ 3,675,452	\$ (6,913,540)
<b>Administration Subtotal</b>	<b>\$ 16,316,760</b>	<b>\$ 6,924,538</b>	<b>\$ (9,392,222)</b>
<b>Operations</b>			
Salaries & Benefits	\$ 17,348,209	\$ 10,082,021	\$ (7,266,188)
Services & Supplies	\$ 6,564,448	\$ 2,531,303	\$ (4,033,145)
<b>Operations Subtotal</b>	<b>\$ 23,912,657</b>	<b>\$ 12,613,324</b>	<b>\$ (11,299,333)</b>
<b>Capital</b>			
Salaries & Benefits	\$ 311,911	\$ 547,688	\$ 235,777
Services & Supplies	\$ 665,840	\$ 101,729	\$ (564,111)
<b>Capital Subtotal</b>	<b>\$ 977,751</b>	<b>\$ 649,417</b>	<b>\$ (328,334)</b>
<b>Total Passenger Expenditures</b>	<b>\$ 41,207,168</b>	<b>\$ 20,187,279</b>	<b>\$ (21,019,889)</b>

<b>Passenger (Capitalized) Expenditures</b>			
Buildings & Capital Improvements	\$ -	\$ -	\$ -
Machinery & Equipment	\$ 3,415,955	\$ 1,111,795	\$ (2,304,160)
Infrastructure	\$ 12,092,168	\$ 3,647,687	\$ (8,444,481)
<b>Total Passenger (Capitalized) Expenditures</b>	<b>\$ 15,508,123</b>	<b>\$ 4,759,482</b>	<b>\$ (10,748,641)</b>

<b>Passenger Expenditures + Capitalized</b>	<b>\$ 56,715,291</b>	<b>\$ 24,946,761</b>	<b>\$ (31,768,530)</b>
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## FREIGHT REVENUES

	FY 2022-23 Approved Budget	Actual	Amount Over/ Under Budget	Comments
<b>Revenues</b>				
<b>Freight</b>				
Sales/Use Taxes	\$ -	\$ -	\$ -	
Interest and Lease Earnings	\$ 245,000	\$ 402,540	\$ 157,540	Leases renew throughout the year
Miscellaneous Revenue	\$ 239,190	\$ 257,255	\$ 18,065	Includes 45(G) tax credit
Freight Traffic	\$ 1,100,000	\$ 512,831	\$ (587,169)	
State Grants	\$ 4,206,000	\$ 612,419	\$ (3,593,581)	State grants are received throughout the year
Charges For Services	\$ 25,000	\$ 5,856	\$ (19,144)	Includes freight car storage.
Federal Funds (Non-COVID Relief)	\$ -	\$ -	\$ -	
Federal Funds (COVID)	\$ -	\$ -	\$ -	
Other Governments	\$ -	\$ -	\$ -	
<b>Freight Subtotal</b>	<b>\$ 5,815,190</b>	<b>\$ 1,790,901</b>	<b>\$ (4,024,289)</b>	

## FREIGHT EXPENDITURES

	FY 2022-23 Approved Budget	Actual	Amount Over/ Under Budget
<b>Freight Expenditures</b>			
<b>Administration</b>			
Salaries & Benefits	\$ -	\$ -	\$ -
Services & Supplies	\$ -	\$ 24,577	\$ 24,577
<b>Administration Subtotal</b>	<b>\$ -</b>	<b>\$ 24,577</b>	<b>\$ 24,577</b>
<b>Operations</b>			
Salaries & Benefits	\$ 893,533	\$ 530,974	\$ (362,559)
Services & Supplies	\$ 1,045,967	\$ 352,094	\$ (693,873)
<b>Operations Subtotal</b>	<b>\$ 1,939,500</b>	<b>\$ 883,068</b>	<b>\$ (1,056,432)</b>
<b>Capital</b>			
Salaries & Benefits	\$ -	\$ -	\$ -
Services & Supplies	\$ 3,040,398	\$ 794,080	\$ (2,246,318)
<b>Capital Subtotal</b>	<b>\$ 3,040,398</b>	<b>\$ 794,080</b>	<b>\$ (2,246,318)</b>
<b>Total Freight Expenditures</b>	<b>\$ 4,979,898</b>	<b>\$ 1,701,725</b>	<b>\$ (3,278,173)</b>

<b>Freight (Capitalized) Expenditures</b>			
Buildings & Capital Improvements	\$ -	\$ -	\$ -
Machinery & Equipment	\$ 143,000	\$ -	\$ (143,000)
Infrastructure	\$ -	\$ -	\$ -
<b>Total Freight (Capitalized) Expenditures</b>	<b>\$ 143,000</b>	<b>\$ -</b>	<b>\$ (143,000)</b>

<b>Freight Expenditures + Capitalized</b>	<b>\$ 5,122,898</b>	<b>\$ 1,701,725</b>	<b>\$ (3,421,173)</b>
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## CAPITAL PROJECTS

	Total Project Budget	Expended in Prior Fiscal Years	Budgeted in FY23 (Includes Amendments through	Remaining to be Budgeted in Future Years	Project Status
<b>PASSENGER RAIL PROJECTS</b>					
Windsor Extension	\$ 70,000,000	\$ 24,256,464	\$ -	\$ 45,743,536	MTC Lawsuit has been resolved. SMART is planning next steps to resume construction.
Sonoma County Pathway Connector Project - Design & Construction	\$ 17,482,847	\$ 2,240,211	\$ 2,481,284	\$ 12,761,352	Project has been combined with the Petaluma North Station.
Marin & Sonoma Pathway Design & Permitting	\$ 10,752,215	\$ 604,212	\$ 5,349,680	\$ 4,798,323	Conducting engineering design to prepare for construction.
McInnis Pkwy. at Bridgewater Dr. to Smith Ranch Rd. Construction	\$ 2,158,026	\$ -	\$ -	\$ 2,158,026	Conducting engineering design to prepare for construction.
Joe Rodota to 3rd St. Design and Construction	\$ 309,377	\$ 17,330	\$ 292,047	\$ -	In design - Construction will depend on grant execution.
Petaluma North Station	\$ 28,041,327	\$ 35,744	\$ 1,519,892	\$ 26,485,691	Conducting engineering design to prepare for construction.
Path-of-Travel Improvements	\$ 501,489	\$ 236,116	\$ 264,523	\$ -	Construction Started.
Payran to Lakeville Pathway - Design & Construction	\$ 1,409,037	\$ -	\$ 1,409,037	\$ -	Construction is on hold due to wet soil conditions.
Basalt Creek Timber Bridge Replacement	\$ 626,103	\$ 77,543	\$ 107,401	\$ 441,159	Finalizing design and working with agencies on environmental permitting.
San Antonio Tributary Timber Trestle Replacement	\$ 1,071,264	\$ 81,358	\$ 118,840	\$ 871,066	Finalizing design and working with agencies on environmental permitting.
<b>FREIGHT RAIL PROJECTS</b>					
Black Point Bridge - Fender Replacement	\$ 875,742	\$ 89,044	\$ 725,741	\$ -	Construction is complete.
Highway 37 Grade Crossing Reconstruction	\$ 505,394	\$ -	\$ 505,394	\$ -	Construction planned for May.
Brazos Branch Bridge Repairs	\$ 1,890,963	\$ 16,594	\$ 1,815,963	\$ 58,406	Bridge repairs planned for Spring 2023.

## 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	\$ 51,610,022
Sonoma County Investment Pool *	\$ 67,709,665
Total Cash on Hand	\$ 119,319,686
<u>Reserves</u>	
Self-Insured	\$ 2,370,675
OPEB/ CalPERS	\$ 4,074,676
Operating Reserve	\$ 10,000,000
Capital Sinking Fund	\$ 9,625,000
Corridor Completion	\$ 7,000,000
Total Reserves	\$ 33,070,351
Cash Balance	\$ 86,249,335
Less: Current Encumbrances	\$ 8,307,519
Balance	\$ 77,941,816
Less: Estimated FY23 Year-end Fund Balance	\$ 39,321,718
<b>Remaining Balance</b>	<b>\$ 38,620,098</b>
* Does not include funds held by the trustee for debt service	

Note: Cash Balance significantly increased this month due to receipt of federal funds associated with Fiscal Year 2022.



# Contract Summary

Active Contracts as of March 1, 2023

## PASSENGER RAIL

Contractor	Scope	Fiscal Year 22/23 Projected	Fiscal Year 22/23 Actuals-To-Date
A.J. Janitorial Service	Janitorial Services for all Stations, Roblar, ROC, and Fulton	110,000	72,320
AI-Media Technologies, LLC	Closed-Captioning Services	13,000	3,240
Air & Lube Systems, Inc.	Structural Alterations to the Rail Operation Center and Installation of the Wheel Press Machine	275,500	275,500
Alcohol & Drug Testing Services, LLC	DOT and FRA-regulated Drug and Alcohol Testing Services	36,000	23,721
Allen, Glaessner, Hazelwood LLP	Legal Services for Litigation and Rail Transit Issues	100,000	7,982
Alliant Insurance Services	Insurance Brokerage and Risk Management Services	70,000	-
American Integrated Services, INC.	On-Call Biohazard Remediation Services	50,000	-
American Rail Engineers Corporation	Railroad Bridge Inspections, Bridge Engineering, and Related Services	641,551	37,387
Asbury Environmental Services (AES)	Hazardous and Non-Hazardous Waste Removal and Disposal Services	10,000	280
Atlas Copco Compressors, LLC	Air Compressor Maintenance Services	8,400	2,195
BBM Railway Equipment, LLC	Wheel Press Machine - Furnish, Install, Configure, Test, Commission, and Train SMART Staff	310,664	257,166
Becoming Independent	Emergency Bus Bridge Services	22,000	7,000
Bettin Investigations	Pre-Employment Investigation, Background Screening, and Related Services	2,500	1,700
BKF Engineers Inc.	Design and Engineering Services for MUP Segments in Sonoma and Marin Counties	1,612,958	1,242,068
Bolt Staffing Service, Inc.	Temporary Staffing Services	60,000	32,688
Bright Star Security, Inc.	Security Patrol at SMART's Cal Park Tunnel	10,980	6,405
Burdell Tenancy In Common	Purchase of 6 Seasonal Wetland Mitigation Credits	834,000	834,000
Business Training Library, LLC	Cloud-Based Learning Courses	14,441	14,373
Cinquini & Passarino, Inc.	Right-of-Way Land Surveying and Related Services	20,000	2,248
Craft & Commerce, LLC	Marketing and Community Outreach Services and Support	200,000	43,536
CSW/Stuber-Stroeh Engineering Group	Design and Engineering Services for 5 MUP Segments in Marin County	947,719	-
D Block Security	Security and Patrol Services	75,000	-
DeAngelo Contracting Services, LLC	Assignment of OP-SV-21-006 Vegetation Control Services	43,250	5,250
Dikita Enterprises, Inc	NTD Compliant Passenger Counting Services	40,688	6,695
Doc Bailey Construction Equipment, Inc.	Hi Rail Vehicle Inspection, Maintenance, Repair, and Certification Services	25,000	5,500
Doug Williams	Fire and Life Safety Consultant	3,585	975
Dr. Lance O'Connor	Occupational Health Screening Services	3,000	1,570
Dunnigan Psychological & Threat Assessments, LLC	Employment-Related Psychological Evaluation Services	25,000	9,000
Eide Bailly LLP	Financial Audit Services	50,885	33,450
eLock Technologies, LLC	Station Bike Lockers - Ongoing Maintenance and Support Services	13,130	8,408
Empire Cleaners	Operations Uniform Dry Cleaning, Laundering, and Related Services	18,000	8,673
Environmental Logistics, INC.	On-Call Biohazard Remediation Services	150,000	-
Essel Technology Services	Phase 1 Environmental Site Assessment ESA	2,200	2,200
Gallagher Benefit Services, Inc.	Classification and Compensation Study Services	84,350	-
Gary D. Nelson Associates, Inc.	Temporary Staffing and Placement Services	40,000	1,565
George Hills Company, Inc.	Third Party Claims Administration Services	45,000	1,073
GHD, Inc.	3 Segments MUP Petaluma - Penn Grove - Rohnert Park	31,586	29,475
Ghilotti Bros, Inc.	Construction of Non-Motorized Pathway - Lakeville to Payran	1,237,052	428,683
Golden Five, LLC	Microsoft 365 Consulting Services	85,600	48,625
GP Crane & Hoist Services	Cal/OSHA Inspection Services	3,960	2,640
Granicus, Inc.	Media Streaming and Internet Broadcasting Services	12,248	12,248
Hanford A.R.C.	Maintenance and Monitoring the the Las Gallinas Creek Watershed Riparian Enhancement Planting	21,215	8,832
Hanford A.R.C.	Implementation and Monitoring, San Rafael Creek Riparian Enhancement Project	39,610	16,504
Hanson Bridgett LLP	Legal Services	150,000	74,203
HCI Systems, Inc.	Fire Equipment Inspection and Certification	17,274	-
Hogan Lovells LLP	Legal Services - Freight and Passenger Rail Sector	50,000	8,459
Holland Company	Track Geometry and Measurement Services	24,000	24,000

<b>Contractor</b>	<b>Scope</b>	<b>Fiscal Year 22/23 Projected</b>	<b>Fiscal Year 22/23 Actuals-To-Date</b>
Hulcher Services, Inc.	On-Call Derailment Services	75,000	-
Hunt and Sons, Inc.	Bulk Delivery of Motor Oil (15W40)	16,000	10,967
Innovative Business Solutions	Payroll Processing Software	31,700	20,613
Integrative Security Controls, Inc.	CCTV Maintenance and Support	30,000	2,218
Intelligent Technology Solutions, LLC	Maximo SaaS Development, Implementation, and Related Services	222,122	169,683
JMA Civil, Inc.	On-Call Civil & Rail Engineering Design Services	44,000	-
Khoury Consulting, LLC	California State Legislative and Advocacy Services	80,000	20,000
LC Disability Consulting	Disability Access Consulting	12,000	4,600
LeaseQuery, LLC	Lease Software Licensing and Software Support Services	25,000	11,900
Leete Generators	Generator Inspection and Maintenance Services	5,000	2,811
Lewis, Brisbois, Bisgaard & Smith LLP	Various legal services related to transit	50,000	3,424
Lisa Wolper, LCSW, SAP	Substance Abuse Professional Services	5,000	600
Masabi LLC	SMART Mobile Ticketing Pilot Project	57,000	33,250
MaxAccel	Compliance Management Software Design/Implementation/Asset Management	58,000	20,276
Mike Brown Electric Co.	On-Call Electrical Maintenance	25,000	-
Militus, Inc.	Cybersecurity and Network Threat Analysis and Assessment	40,000	40,000
Milton R. Davis dba Davis Sign Co., Inc.	Print, Install, and Remove Hoilday Express Window Clings on SMART's Train	1,230	926
Mission Linen Supply	Employee Uniform Services	32,084	19,024
Modern Railway Systems, Inc.	Monitoring and Maintenance SMART's Communications Network and TDX System	91,250	45,401
MuniServices, LLC	Sales Tax Recovery Services	89,408	25,791
Netspeed Solutions, Inc.	SMART Phone System Maintenance	15,684	11,867
North Bay Bottling (Alex Ruiz Sr.)	Drinking Water Delivery Service	2,900	621
North Bay Petroleum	Provision of Fuel for DMUs	1,473,353	1,010,332
Nossaman LLP	Litigation, Rail Transit Issues, and other related legal services	200,000	142,877
Occupational Health Centers of CA	Pre-Employment Evaluation Services	30,999	8,088
Oil Stop, LLC	Automotive Repair and Service	3,500	2,421
Oracle	Fusion ERP System	60,000	27,635
Panatrol Corp	Haystack Bridge Automation Software Reprogramming	2,350	2,350
Parodi Investigative Solutions	Pre-Employment Background Investigation Services	27,500	7,575
Peterson Mechanical, Inc.	HVAC Maintenance Services	24,000	-
PFM Financial Advisors, LLC	Financial Advisory Services	75,000	-
Portola Systems, Inc.	SMART Station Network Maintenance and Configuration Services	255,000	233,231
Precision Wireless	Tech Support and Maintenance for Land Mobile Radio	31,150	12,593
Quinn Covarrubias, a Professional Law Corporation	Legal Services for Rail Transit Matters	100,000	48,918
SEFAC USA	Portable Lifting Jack Inspection and Certification Services	8,000	-
Semple Appraisals Inc.	Perform Real Estate Appraisal Services	4,000	4,000
Sherwood Electromotion, Inc.	Overhaul Services for SMART's Permanent Magnet Alternators	60,000	27,720
Sierra-Cedar, LLC	Oracle Enterprise Resources Planning Software	150,000	44,975
Sonic.Net	Backhaul Agreement	9,451	-
Sonoma County Fleet Operation Division	Non-Revenue Fleet Vehicle Installation, Maintenance, and Repair Services	38,000	5,601
Sperry Rail Service	Rail Flaw Detection Services	13,500	-
SPTJ Consulting, Inc.	Network Monitoring and Support Services	303,219	105,037
Stericycle, Inc.	Medical Waste Pick-Up and Disposal Services	2,000	-
Summit Signal, Inc.	Call-Out Maintenance and Repair Services for Signal Grade Crossings	10,000	-
Survival CPR & First Aid, LLC	First Aid and CPR Training, AED Compliance Program	2,800	2,667
Swiftly, Inc.	AVL Mobile Application and Website Interface	8,820	-
The Pape Group, Inc. dba Pape Material Handling	On-site ANSI/OSHA Aerial Safety Inspections and Maintenance Services	3,941	3,773
Traffic Management, Inc.	Project Specific Flagging, Traffic Control and Related Services.	10,179	7,257



<b>Contractor</b>	<b>Scope</b>	<b>Fiscal Year 22/23 Projected</b>	<b>Fiscal Year 22/23 Actuals-To-Date</b>
Triliant, LLC	Online Training Program	3,000	-
Tri Valley Recycling, Inc.	eWaste Collection and Recycling	100	-
Trillium Solutions, Inc.	Transit Feed Mapping Software	2,000	1,890
UTCRA, LLC	Wheel Pressing Services	25,000	-
Van Scoyoc Associates	Federal Lobbying Services	60,000	30,000
VenTek Transit Inc.	Fare Vending Machine Operations and Maintenance Services	282,704	127,744
Vista Broadband Networks, Inc.	Broadband Services	9,000	-
W.J.C. Electric, Inc. dba Hahn Automotive	Non-Revenue Vehicle Repair and Service	30,000	28,664
Ward Levy Appraisal Group, Inc.	Real Estate Appraisal Services for SMART-Owned Property	7,000	5,000
West Coast Arborists, Inc.	Tree Trimming and Tree Removal Services	30,000	1,200
WRA, Inc.	As-Needed Environmental Consulting Services	119,040	56,397
	<b>Totals:</b>	<b>\$12,124,330</b>	<b>\$5,993,754</b>

#### **FREIGHT RAIL**

American Rail Engineers Corporation	Railroad Bridge Inspections, Bridge Engineering, and Related Services	141,171	117,133
Asbury Environmental Services (AES)	Hazardous and Non-Hazardous Waste Removal and Disposal Services	10,000	190
Cathcart Rail Holdco, LLC dba Cathcart Field Services, LLC	Running Repair Agent Inspection and Maintenance Services	2,500	-
DeAngelo Contracting Services, LLC	Assignment of OP-SV-21-006 Vegetation Control Services	30,000	5,250
Doc Bailey Construction Equipment, Inc.	Hi Rail Vehicle Inspection, Maintenance, Repair, and Certification Services	1,000	-
E&M Electric and Machinery, Inc.	Bridge Automation Software Design Services	2,500	2,466
Freight Rail Tracking Software	Freight Rail Tracking Software	29,574	2,375
GATX Rail Locomotive Group, LLC	Freight Locomotive Lease Agreement	32,864	23,838
Hue & Cry, Inc.	Security System at Schellville Depot	1,500	994
Hulcher Services, Inc.	On-Call Derailment Services	25,000	-
Koppers Railroad Structures, Inc.	Emergency Repair Work on "Railroad Slough" MP B38.97	460,865	-
Koppers Railroad Structures, Inc.	Brazos Branch Timber Bridge Repairs - Phase I Contract	1,165,302	89,608
Lambertus J. Verstegen dba South West Locomotive Repair	Overhaul and Repair Services of Locomotive RP20DB	20,000	6,401
Manson Construction Co.	Black Point Bridge Repair	576,870	576,870
Mickelson & Company, LLC	45G Tax Credit Advisory Services	14,351	14,351
North Bay Petroleum	Provision of Fuel for DMUs	90,000	43,379
Rail Power Services, LLC	Mobile Locomotive Maintenance, Repair, and Related Services	50,000	-
Stacy and Witbeck, Inc.	Highway 37 At-Grade Crossing Repair	378,694	-
Summit Signal, Inc.	Inspection, Testing, and Maintenance Services for Signal Equipment Along Brazos Branch	80,000	52,592
Wine Country Sanitary, Inc.	Portable Toilet Rental and Maintenance	1,576	1,377
WRA, Inc.	Freight - Black Point Bridge Biological Monitors	5,960	5,960
	<b>Totals:</b>	<b>\$3,119,727</b>	<b>\$942,784</b>

Actuals-To-Date includes invoices that have been approved as of February 28, 2023, but may not have been processed in SMART's Financial System.



April 19, 2023

**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

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

**SUBJECT:** Approval of Golden Five, LLC Contract Amendment No. 2

Dear Board Members:

**RECOMMENDATIONS:**

Authorize the General Manager to execute Contract Amendment No. 2 with Golden Five, LLC to increase the not-to-exceed contract amount by \$30,000 for a total not-to-exceed of \$224,600.

**SUMMARY:**

In January of 2022, SMART entered an agreement with Golden Five, LLC to provide scheduled and on call managed services for SMART's Microsoft 365 infrastructure. This scope also provides for management of backups of SMART's on-premise infrastructure.

SMART's Microsoft 365 infrastructure has migrated away from on-premise to the cloud. Microsoft recommends that companies utilize a third-party backup solution for company data. SMART is purchasing software to manage this backup. SMART Information Systems requires expert assistance to properly install, configure, and maintain this software.

This implementation work will be executed against Task 2 - On Call Services. Currently, SMART has consumed most of the original contract budget for on call services. This amendment provides additional funding for both the implementation of third party backup as well as additional on call services.

**FISCAL IMPACT:** This has been accounted for in the Fiscal Year 2023 budget. No change to the budget is needed to support this amendment.

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

Sincerely,

/s/

Bryan Crowley  
Information Systems Manager

Attachment(s): Golden Five, LLC Contract Amendment No. 2

**SECOND AMENDMENT TO THE AGREEMENT BETWEEN  
THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT  
AND GOLDEN FIVE, LLC**

This Second Amendment dated as of April 10, 2023 (the “Second Amendment”), to the Agreement by and between Golden Five, LLC (hereinafter referred to as “Consultant”) and the Sonoma-Marín Area Rail Transit District (hereinafter referred to as “SMART”), dated as of January 1, 2022 (the “Original Agreement,” as amended and supplemented by the First Amendment, and now this Second Amendment, the “Agreement”).

**RECITALS**

WHEREAS, Consultant and SMART previously entered the Original Agreement on January 1, 2022, to provide Microsoft 365 managed services, and

WHEREAS, SMART previously amended the Agreement to add two sub-tasks to Task 1 of the Scope of Work and to modify the Schedules of Rates; and

WHEREAS, SMART desires to amend the Agreement to increase the not-to-exceed amount by \$30,000 for a total not-to-exceed amount of \$224,600.

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

Section 5.02            Consultant shall be paid in accordance with the rates established in **Exhibit B**; provided, however, that total payments to Consultant shall not exceed \$224,600.00 without the prior written approval of SMART. Consultant shall submit its invoices in arrears on a monthly basis in a form approved by the Chief Financial Officer. The invoices shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. All reimbursable expenses must comply with SMART’s Travel Guidelines and must receive prior approval. Consultant’s reimbursement for materials/expenses shall not include items already included in Consultant’s overhead as may be billed as a part of its labor rates set forth in **Exhibit B**. SMART does not reimburse Consultant for travel time.

2. 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 Second Amendment as of the date first set forth above.

**SONOMA-MARIN AREA RAIL TRANSIT  
DISTRICT**

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

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

**GOLDEN FIVE, LLC**

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

By \_\_\_\_\_  
Dr. Sonia Clavero Villarrubia,  
Chief Executive Officer

**APPROVED AS TO FORM:**

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

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



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

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

**Kate Colin**  
Transportation Authority of Marin

**Chris Coursey**  
Sonoma County Board of Supervisors

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

**Barbara Pahre**  
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**Gabe Paulson**  
Marin County Council of Mayors and  
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Sonoma County Board of Supervisors

**Chris Rogers**  
Sonoma County Mayors' and  
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**Mary Sackett**  
Marin County Board of Supervisors

**Eddy Cumins**  
General Manager

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

April 19, 2023

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

**SUBJECT:** Approval of Board Resolution No. 2023-12, Budget Amendment for Freight

Dear Board Members:

**RECOMMENDATIONS:** Review and approve Board Resolution No. 2023-12, Budget Amendment for Freight for Fiscal Year 2022-23.

**SUMMARY:**

Over the last several months, we have had significant wind and flooding events in the North Bay which have had a negative impact on freight operations.

On March 13th, wind knocked down a signal mast and cantilever at the 8<sup>th</sup> Street West Side Crossing and on March 14th, the Schellville yard was flooded.

The flooding at the Schellville yard was quite impactful to our operations. On March 16th, a freight train was heading southbound when the train derailed 4 loaded rail cars. Two of the four cars tipped over causing major damage to the track on the Brazos Junction mainline at MP-B 40.35. After the site was cleaned up, an investigation took place, and it was determined that the track roadbed was unstable due to the heavy rains and flooding.

Costs include rerailing, cleanup, two cars and the associated commodities that they were carrying, overtime, and costs to repair the track. In addition, there is cost to replace the signal mast and cantilever due to the wind event. The total cost is estimated at \$259,538, however we have funding in the budget of \$125,000 that can be applied to these costs and the remaining \$134,538 will need to come out of the unrestricted fund balance.

Due to the cause of these events, SMART will be requesting reimbursement from emergency relief funds through Sonoma County.

**FISCAL IMPACT:** The estimated additional cost is \$134,538. This action reduces the unrestricted Freight fund balance from \$1.4 million

to \$1.3 million.

Sincerely,

/s/

Heather McKillop  
Chief Financial Officer

Attachment(s): Board Resolution No. 2023-12  
Appendix B: Freight Sources and Uses

## APPENDIX B - FREIGHT SOURCES AND USES

	FY 23 Amended	04/19/2023 Adjustments	Total	Comments
Beginning Fund Balance	\$ 1,107,702	\$ -	\$ 1,107,702	
<b>Revenues</b>				
State Grant (42341)	\$ 4,000,000		\$ 4,000,000	
State Grant (Blackpoint)	\$ 206,000		\$ 206,000	
Freight Movement Fees	\$ 1,100,000		\$ 1,100,000	
Leases	\$ 245,000		\$ 245,000	
Storage	\$ 25,000		\$ 25,000	
45(g) Tax Credit	\$ 239,190		\$ 239,190	
Total Revenues	\$ 5,815,190		\$ 5,815,190	
Total Revenues + Fund Balance	\$ 6,922,892		\$ 6,922,892	

	FY 23 Amended	04/19/2023 Adjustments	Total	Comments
Salaries	\$ 786,060	\$ -	\$ 786,060	
Service & Supplies	\$ 1,481,185	\$ 134,538	\$ 1,615,723	Costs of rerailling, fixing rails, cars, & commodities
Total Salaries, Benefits, Service, & Supplies	\$ 2,267,245	\$ 134,538	\$ 2,401,783	
Balance	\$ 4,655,647	\$ (134,538)	\$ 4,521,109	

	FY 23 Amended	04/19/2023 Adjustments	Total	Comments
Blackpoint Bridge	\$ 725,741		\$ 725,741	
Highway 37 Grade Crossing Reconstruction	\$ 498,694		\$ 498,694	
Brazos Branch - Bridge Repairs (High Priority)	\$ 1,845,963		\$ 1,845,963	
New York Air Brake	\$ 68,000		\$ 68,000	
PTC	\$ 75,000		\$ 75,000	
Total Capital & SOGR	\$ 3,213,398	\$ -	\$ 3,213,398	
Balance	\$ 1,442,249	\$ (134,538)	\$ 1,307,711	



**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT, STATE OF CALIFORNIA, AMENDING RESOLUTION NO. 2022-22, THE ANNUAL BUDGET FOR FISCAL YEAR 2022-2023 TO PROVIDE FOR ADDITIONAL APPROPRIATION AUTHORITY**

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**WHEREAS**, as part of its approval of the Annual Budget for Fiscal Year 2022-2023, the Board of Directors considered the annual expenditures necessary for the Sonoma-Marín Area Rail Transit District; and

**WHEREAS**, on June 15, 2022, the Board adopted Resolution No. 2022-22 approving the annual budget for Fiscal Year 2022-2023; and

**WHEREAS**, Resolution No. 2022-22 considered the appropriation of expenditures for the operations, maintenance, rehabilitation, and repair of freight for Fiscal Year 2023; and

**WHEREAS**, Resolution No. 2022-40 increased the appropriation of expenditures for the operations, maintenance, rehabilitation, and repair of freight for Fiscal Year 2023; and

**WHEREAS**, the estimate revenues and expenditures has changed and additional appropriation authority is needed to accomplish activities for the movement of freight; and

**WHEREAS**, the Board desires to Amend the Annual Budget to provide increased appropriation authority for freight;

**NOW, THEREFORE, BE IT RESOLVED** that Resolution No. 2022-22, Fiscal Year 2022-2023 Annual Budget and Resolution No. 2022-40, Fiscal Year 2022-2023, Freight Amended Budget, is hereby amended to increase expenditure authority by \$134,534 for a total appropriation of \$5,615,181 for Fiscal Year 2023.

**BE IT FURTHER RESOLVED** except as specifically amended or supplemented by this Resolution, Resolution No. 2022-22, together with all supplements, amendments, and exhibits thereto is, and shall continue to be, in full force and effect as originally adopted, and nothing contained herein shall, or shall be construed to, modify, invalidate, or otherwise affect and provision of Resolution No. 2022-22.

**PASSED AND ADOPTED** at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 19<sup>th</sup> day of April, 2023, by the following vote:

**DIRECTORS:**

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ATTEST:

---

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



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

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

**Kate Colin**  
Transportation Authority of Marin

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General Manager

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April 19, 2023

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

**SUBJECT:** Authorize the General Manager to Execute a Contract with Code 3 Entertainment Services dba Code 3 Transportation for the provision of Microtransit Operator Services

Dear Board Members:

### RECOMMENDATION

Authorize the General Manager to execute Contract No. OP-SV-22-011 with Code 3 Entertainment Services dba Code 3 Transportation for the provision of Microtransit Operator Services in an amount not-to-exceed amount of \$1,133,506.

### SUMMARY

In July 2022, staff brought information to the Board regarding an opportunity to establish an on-demand shuttle at the Sonoma County Airport Station to provide a first-last mile connection between the SMART station, Airport Terminal, and surrounding destinations. The Board gave direction to staff to issue a Request for Proposals for both the microtransit software and the service provision, separately. SMART executed Agreement No. PL-PS-22-002 with The Routing Company for the provision of the Microtransit Software on February 24, 2023.

SMART issued the Request for Proposal (RFP) for Microtransit Operations on January 3, 2023. Three (3) Proposals were received in response from the following firms:

1. Code 3 Entertainment Services, LLC dba Code 3 Transportation
2. MV Public Transportation, Inc.
3. Vivalon dba VivalonRides

The Proposals were evaluated by the Selection Committee using the criteria established in the RFP, which included the service approach, staffing plan and capacity, prior experience, key personnel qualifications, and pricing. The evaluation process also included interviews and negotiations with each Proposer.

Following the evaluation process, the Selection Committee made the determination that the Proposal submitted by Code 3 Entertainment Services, LLC dba Code 3 Transportation provides the overall best value to SMART and is recommending the firm for the award of this contract.

## **BACKGROUND**

Over the last decade, evolving technology and the proliferation of smartphones has changed the transportation industry as on-demand services such as Uber and Lyft offer more flexibility and efficiency. This same technology has been adapted to use in public transit and is known as microtransit service. While traditional public transit picks up passengers at set stops and times (“fixed route”), it is most successful in urban environments with walkable streets and higher densities. Microtransit typically uses small-scale vehicles and can be operated on-demand or on a fixed-route model.

An automated platform takes into account specific rider-needs based on their profile and can field demands in real-time, as well as integrate scheduled trip requests simultaneously. This way of booking, scheduling, and dispatching on-demand transit is in line with our modern expectations established by ride-hailing apps. It is more convenient and user-friendly than traditional demand-responsive transit where riders must call in a trip request (typically 1-7 days in advance) that gets assigned to designated driver shifts through a set manifest.

Riders request microtransit through smartphone apps or through a call center and will get an estimate of their pickup time nearly instantaneously. The operational platform’s algorithm analyzes all requests against available fleets and dispatches trips dynamically to the most efficient option, pooling people onto the same vehicle along the way. The routing is automated, flexible and efficient – with features like digital payment, seat reservations, and live traffic updates. Passengers can usually catch a ride from wherever they request the trip or a “virtual bus stop” to avoid detours and get a more efficient service.

## **SMART-AIRPORT SHUTTLE**

The Airport is seeing record numbers of passengers post-pandemic and is hosting 5 commercial airlines. Within a 1-mile walk, bike, or drive of the Sonoma County Airport Station, there are 310 businesses with over 3,000 employees, and over 1,000 residents. With SMART now running 38 trips per weekday, Airport travel at an all-time high, tourism rebounding, and employment continuing to grow in the Airport area, there is tremendous potential for an Airport Area SMART Shuttle to provide a convenient connection for both tourists and commuters.

Microtransit or on-demand transit can take a variety of forms, depending on the needs of the area. For the proposed Airport Shuttle, there are two primary destinations which would serve as the anchor points of a shuttle: the SMART station and the Airport Terminal. Riders connecting between the train and airport need to have confidence that they will make their train or flight. The microtransit routing software offers the ability to provide a flex-demand model, with a fixed timepoint scheduled at the SMART station, and flexible stops to serve the Airport and surrounding areas. These on-demand stops would serve commuters to the Airport Terminal, business parks, residents, passengers traveling to the Veteran’s Affairs Clinic, and other destinations. SMART riders arriving at the Airport Station would see a branded vehicle waiting just outside the station and the Airport would have a clearly designated stop just outside the terminal.

The initial operating span is planned to be 8:00am – 6:00pm, seven days per week. Based on the flight schedule, this timespan would cover over 75% of flights arriving or departing at Sonoma County Airport. Service hours could be expanded in the future as demand warrants. The shuttle fare would be \$1.50 per rider and would be payable through the Routing Company app or by cash fare; with the next phase of the Clipper fare payment system (C2) in 2024, use of Clipper on the shuttles may be possible.

**NEXT STEPS**

In February 2023, SMART awarded a contract to The Routing Company for a microtransit software platform. With the award of an operations contract to C3 Transportation, a shuttle service can be launched at the initial pilot location, the Sonoma County Airport Station, as early as mid-May 2023.

The contracts for both the microtransit software and shuttle operations are scalable in order to facilitate shuttle provision at other SMART stations. The NTE in the attached contract will allow for operating services for three years, plus two option years, and can be amended if the need to add additional services should arise.

**FISCAL IMPACT:** The Fiscal impact for Year 1 of services is \$371,595 and is currently available in the Fiscal Year 2023 Amended Budget. Funding for future years of the service will be included in future budgets.

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

Respectfully,

/s/  
Emily Betts  
Principal Planner

Attachment(s): Code 3 Entertainment Services LLC Agreement No. OP-SV-22-011

## SERVICE AGREEMENT

This agreement (“Agreement”), dated as of April 19, 2023 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District (hereinafter “SMART”), and Code 3 Entertainment Services LLC dba Code 3 Transportation (hereinafter “Service Provider”).

### RECITALS

WHEREAS, Service Provider represents that it is qualified, licensed, and experienced in the areas of providing Microtransit operations and maintenance 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 Microtransit operations and maintenance services for SMART; and

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

### AGREEMENT

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

Section 1.01        The above Recitals are true and correct.

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

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

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

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

Section 3.01        Initiation Conference. SMART’s Principal Planner or designee (hereinafter “SMART Manager”) will initiate all 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:  
Lester Lesavoy, CEO – High-Level Management Support to Operations  
Aaron Lesavoy, COO – Direct level support for all aspects of the services  
Alisha Stanfield, VP Transportation Logistics –Operations and Program support  
Roberta Guitron, Operations Manager and SMART Account Manager  
Mina Santiago-Boyer, Accounting/HR/Administrative Manager – Invoicing Support  
Sasha Vodicka, Office Manager – Dispatch and Support Services Oversight

## **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 for the satisfactory performance of the work described in the Exhibit A "Scope of Work & Timeline" in accordance with the rate schedule established in the Exhibit B "Schedule of Rates". The not-to-exceed (NTE) amount of \$1,133,506.00 for this Agreement includes labor, supervision, applicable surcharges such as taxes, insurance and fringe benefits as well as indirect costs, overhead and profit allowance, equipment, materials and supplies; in no case shall Service Provider be reimbursed for an amount in excess of the NTE amount without a formal written amendment to this Agreement. 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. Service Provider shall include the following information in it's invoice to SMART: 1) Service Vehicle Type (e.g. Vehicle 1, Vehicle 2, Vehicle 3, Vehicle 4, or Vehicle 5), 2) Station Vehicle is Assigned, 3) Number of Service Hours, Applicable Hourly Service Rate, and 4) Liquidated Damages in the form of a credit, if any.

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 subsequential 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. LIQUIDATED DAMAGES.**

SMART has the right, in its discretion, to impose liquidated damages in accordance with this Section. The Service Provider shall have the opportunity to contest any liquidated damages assessed, but this shall not affect the right of SMART to deduct the amount of liquidated damages from the monthly amount due the Service Provider. Liquidated Damage Events will be measured via Service Provider's records submitted to SMART and SMART's Microtransit Software records and shall be calculated and paid monthly.

The Service Provider and SMART agree that it is extremely difficult to fix actual damages which may result from the failure on the part of the Service Provider to perform certain obligations



under the Agreement. Service Provider and SMART agree that the following defaults under the Agreement will damage the reputation of SMART's Microtransit Service. In addition to the damaged reputation, such damages shall reduce ridership, and, therefore the long-term revenue potential for this Microtransit Service. Accordingly, it is hereby agreed that SMART shall be entitled to the following liquidated damages as compensation for such damage. Liquidated Damage Events include:

- Delayed Service Start: \$50 for each occurrence where service starts more than ten (10) minutes later than the start of designated Service Hours, due to mechanical or staffing problems, such as late reporting drivers or inoperable vehicles.
- Absent Supervisory Staff: \$200 for each day that Service Provider has less than one General Manager or Road Supervisor on duty during all service operation hours, including prior to driver rollout to assure complete schedule adherence.
- Failure to Properly Train Drivers: \$100 for each failure to train a driver assigned to this Contract in accordance with Service Provider's training program. This may be enforced in cases of driver incompetence such as, but not limited to: missed stops or documented and verifiable customer service complaints, etc.
- Failure to Provide Service/Missed Trips: \$150 for each missed trip, defined as a confirmed rider trip through SMART's Microtransit Software, including when Service Provider is unable to provide regularly scheduled service due to a lack of available drivers or operational revenue vehicles that meet minimum vehicles standards. This includes having all safety items fully operational.
- Missed Service Hours: \$150 per missed service hour, including when Service Provider is unable to provide service due to a lack of available drivers or operational revenue vehicles that meet minimum vehicle standards. This includes having all safety items fully operational.
- Operator Discourtesy: \$75 per reported/verified occurrence.
- Customer Complaints: \$75 per occurrence for failure to investigate, document, and communicate to SMART any passenger complaints within two (2) business days.
- Failure to Voluntarily Report: \$100 per occurrence for failure of the Service Provider's Contract Manager to report an action that would trigger liquidated damages per this Agreement that is not reported to SMART within five (5) business days.

The Service Provider shall deduct from its monthly invoice all missed Service Hours regardless of assessment of liquidated damages.

Failure of SMART to assert any right which it has under this Agreement, or to assess any liquidated damages as provided, shall not act as a waiver as to SMART's right to enforce the

provisions of this Agreement, or assess liquidated damages in the future. The assessment of liquidated damages and/or deductions as provided under this Agreement shall in no way relieve the Service Provider of its obligations to provide sufficient service, vehicles, or to meet any of the terms of this Agreement.

## **ARTICLE 7. TERM OF AGREEMENT.**

Section 7.01 The term of this Agreement shall remain in effect for three years with two (2) additional one-year options to extend if mutually agreed upon by both parties, unless terminated earlier in accordance with the provisions of **Article 8** below.

## **ARTICLE 8. TERMINATION.**

Section 8.01 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 60 days written notice to the other party.

Section 8.02 Termination for Cause. Notwithstanding any other provision of this Agreement, should Service Provider fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, SMART may immediately terminate this Agreement by giving Service Provider written notice of such termination, stating the reason for termination.

Section 8.03 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 8.04 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 8.02**, 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 8.05 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 9. 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 10. 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 10.01     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 10.02     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, and \$10,000,000 aggregate.

Section 10.03     Automobile Insurance. Automobile Liability insurance covering bodily injury and property damage in an amount no less than \$10,000,000 combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles.

Section 10.04     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 10.05 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 named insured is not acceptable.

Section 10.06 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 10.07     Documentation. The following documentation shall be submitted to SMART:

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

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

Section 10.08     Policy Obligations. Service Provider’s indemnity and other obligations shall not be limited by the foregoing insurance requirements.

Section 10.09     Material Breach. If Service Provider, for any reason, fails to maintain insurance coverage, which is required pursuant to this Agreement, the same shall be deemed a material breach of this Agreement. SMART, in its sole option, may terminate this Agreement and obtain damages from Service Provider resulting from said breach. Alternatively, SMART may purchase such required insurance coverage, and without further notice to Service Provider, SMART may deduct from sums due to Service Provider any premium costs advanced by SMART for such insurance. These remedies shall be in addition to any other remedies available to SMART.

## **ARTICLE 11. 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 this Agreement. Performance of the services hereunder shall be completed within the time required herein, except if such performance is delayed by earthquake, flood, wildfire, war, or labor strike.

## **ARTICLE 12. EXTRA OR CHANGED WORK.**

Extra or changed work or other changes to the Agreement, and price adjustments as a result of (i) changes to the scope of work / service hours requested by SMART, (ii) changes in laws, rules, regulations, applicable to the services to be provided by Contractor, and/or (iii) costs incurred in response to federal, state, or local emergency 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 13. REPRESENTATIONS OF SERVICE PROVIDER.**

Section 13.01     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 13.02     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 13.03     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 13.04 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 13.05 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 13.06 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 7285.0 et seq).

Section 13.07 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 and work product, 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 13.08 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 14. 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 14** limits SMART’s right to terminate this Agreement pursuant to **Article 7**.

#### **ARTICLE 15. 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 16. METHOD AND PLACE OF GIVING NOTICE, SUBMITTING INVOICES AND MAKING PAYMENTS.**

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



If to SMART Manager:	Sonoma-Marín Area Rail Transit District Attn: Emily Betts 5401 Old Redwood Highway, Suite 200 Petaluma, CA 94954 <a href="mailto:ebetts@sonomamarintrain.org">ebetts@sonomamarintrain.org</a> 707-794-3330
If to SMART Billing:	Sonoma-Marín Area Rail Transit District Attn: Accounts Payable 5401 Old Redwood Highway, Suite 200 Petaluma, CA 94954 <a href="mailto:billing@sonomamarintrain.org">billing@sonomamarintrain.org</a> 707-794-3324
If to Service Provider:	Code 3 Entertainment Services, LLC dba Code 3 Transportation Attn: Alisha Stanfield 3392 Clayton Road Concord, CA 94519 <a href="mailto:alisha@c3transit.com">alisha@c3transit.com</a> (o) (925) 577-9323 (m) (925) 878-1763

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 17. MISCELLANEOUS PROVISIONS.**

Section 17.01     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 17.02     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 17.03     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 17.04     Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

Section 17.05     Licensing Laws. The Service Provider and all subcontractors shall at its sole cost and expense, keep in effect at all times during the term of this Agreement, any licenses, permits, or other such approvals which are legally required for performing the services required under this Agreement.

Section 17.06     Drug-Free Workplace. Service Provider certifies that it will provide a drug-free workplace in compliance with Government Code §8350-§8357.

Section 17.07     No Third-Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

Section 17.08     Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Venue for any action to enforce the terms of this Agreement or for the breach thereof shall be in the Superior Court of the State of California in the County of Marin.

Section 17.09     Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

Section 17.10     Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is

evidenced by a writing signed by both parties.

Section 17.11     Acceptance of Electronic Signatures and Counterparts. The parties agree that this Contract, Agreements ancillary to this Contract, and related documents to be entered into this Contract will be considered executed when all parties have signed this Agreement. Signatures delivered by scanned image as an attachment to electronic mail or delivered electronically through the use of programs such as DocuSign must be treated in all respects as having the same effect as an original signature. Each party further agrees that this Contract may be executed in two or more counterparts, all of which constitute one and the same instrument.

Section 17.12     Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

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

**SERVICE PROVIDER: CODE 3 ENTERTAINMENT SERVICES LLC  
DBA CODE 3 TRANSPORTATION**

By: \_\_\_\_\_  
Lester Lesavoy, Founder and CEO

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

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

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

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

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

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

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

**APPROVED AS TO FORM FOR SMART:**

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

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

## **EXHIBIT A**

### **SCOPE OF WORK & TIMELINE**

#### **I. Overview**

The Sonoma-Marín Area Rail Transit District (SMART) is contracting with Code 3 Entertainment Services, LLC dba Code 3 Transportation to provide Microtransit Operations and Maintenance services for SMART at the Sonoma County Airport Station. The scheduling and dispatching software used to match passengers and drivers will be provided and supported by SMART and its software provider, The Routing Company. Should the pilot shuttle prove successful, it is SMART's intent to add additional stations and shuttles to the program.

#### **II. Project Management**

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

The Operations Manager, Roberta Guitron, will serve as SMART's day-to-day Account Manager. Her contact is: 415-509-5327 and [roberta@c3transit.com](mailto:roberta@c3transit.com).

The Chief Operating Officer, Aaron Lesavoy, will also be supporting SMART's operation. His contact information is: 925-878-1763 and [aaron@c3transit.com](mailto:aaron@c3transit.com).

Afterhours and Emergency Dispatch Contact Information: 800-727-0279

#### **III. Scope of Work**

##### **A. Objective**

SMART's objective is to create a scalable model for first-last mile shuttle provision to SMART stations in Sonoma and Marin Counties, beginning with a pilot shuttle at the Sonoma County Airport Station with an initial service area of 2 miles from the SMART Station, including the Sonoma County Airport terminal. Should the pilot shuttle prove successful, it is SMART's intent to add additional stations and shuttles to the program.

SMART's goal with the implementation of this service is to improve our train rider's experience and reduce barriers to entry for new SMART Train ridership through better first and last mile connectivity.

##### **B. Service Areas**

###### **a. Sonoma County Airport Station Microtransit Service Operations**

i. Service Area

1. The Service Area will be approximately 2 miles around the Sonoma County Airport SMART Station located at 1130 Airport Boulevard, Santa Rosa, CA 95403. SMART may adjust the service area at its discretion.
2. The dispatch and scheduling software will allow the route to have both “fixed timepoint” stops, which are served on every run, and “virtual” stops scheduled by the software, which are served on an on-demand basis based on rider requests. SMART may adjust these fixed timepoints at its discretion.
3. SMART will have an advertised schedule for this service area showing the fixed timepoints at both the SMART Station and the Sonoma County Airport Terminal.
4. Riders may schedule rides using a smartphone app, calling in to a call center (Staffed by SMART or it’s Third-Party Software Provider), or by walking-on at the time of the trip. While riders will be encouraged to book their trips ahead of time, the operator of the vehicle will be required to book walk-on trips using the microtransit software as needed.

ii. Service Hours

1. Initial Service Hours shall be:

- a. Weekdays: 8:00am – 6:00pm (Pacific)
- b. Weekends: 8:00am – 5:30pm (Pacific)

“Service Hours” are defined as the in-service hours for the SMART shuttle services, regardless of whether a passenger is on board.

Service hours are subject to change. Changes to schedules shall be planned in advance with notification in writing to the Service Provider. Changes to schedules will require mutual agreement by both SMART and the Service Provider.

2. Services shall be 7 days per week, including Holidays on which SMART operates service.

iii. Vehicle Requirements for this Station

1. Initially, the vehicle providing microtransit service at this station shall be the Vehicle Type 5. SMART shall have the

right to request alternative vehicles based on service demand needs following implementation of the service. Service Provider shall accommodate such requests in a timely manner.

2. The vehicle shall have designated space for luggage.
3. Dedicated overnight parking for the service vehicle may be made available at SMART's Airport Station parking lot if mutually agreed upon in writing by both SMART and Service Provider.

#### C. General Service Vehicle Requirements

- a. Service Provider has the following vehicle types available in its fleet for use during the performance of this contract.

- i. Vehicle 1: 8 Passenger plus Wheelchair

This vehicle shall be the Starcraft Starlite Transit or similarly sized vehicle as mutually approved by both SMART and Service Provider.

- ii. Vehicle 2: 12 Passenger plus Wheelchair

This vehicle shall be the Starcraft Allstar Shuttle or similarly sized vehicle as mutually approved by both SMART and Service Provider.

- iii. Vehicle 3: 16 Passenger plus Wheelchair

This vehicle shall be the Starcraft Allstar Shuttle or similarly sized vehicle as mutually approved by both SMART and Service Provider.

- iv. Vehicle 4: 24 Passenger plus Wheelchair

This vehicle shall be the Starcraft Allstar XL F550 or similarly sized vehicle as mutually approved by both SMART and Service Provider.

- v. Vehicle 5: 10 Passenger plus Wheelchair (Electric Vehicle Option)

This vehicle shall be the Revolv All Electric Shuttle or similarly sized vehicle as mutually approved by both SMART and Service Provider.

If the Electric Vehicle Type is selected, additional costs associated with installing a charging station will occur. This cost to SMART will be negotiated at the time this vehicle type is selected.

The service rates for these available vehicle types are listed in the Exhibit B Rate Schedule.

SMART, in collaboration with Service Provider, will identify the vehicle type and appropriate seating layout to be used for each service location. SMART will have final review and approval authority prior to the vehicle being used in operation.

- b. The Service Vehicles must meet the following requirements:
  - i. ADA Accessible with space for at least 1 wheelchair
  - ii. Space for Luggage
  - iii. Be equipped with bicycle racks with the capability of carrying up to 2 bikes per transport.
  - iv. Available to be branded by SMART. (SMART will be responsible for the branding, including design and costs. Additionally, SMART will be responsible for the cost and provision of the removable branding for the back-up vehicle)
- c. Backup vehicles must be available as needed in the event a service vehicle breaks down or becomes unable to perform service. Safety of passengers and drivers shall be of the utmost importance in these situations.

In the event of a mechanical breakdown, Service Provider's dispatcher or Account Manager shall immediately notify the SMART Manager of the situation, how many passengers are onboard, and an ETA on resolution.

Service Provider shall provide a replacement vehicle in 30 minutes or less. If passengers are onboard the disabled vehicle, the driver will instruct the passengers to change vehicles in an orderly and safe manner.

- d. Service Vehicles must be clean and in good operational condition for service. A clean vehicle represents the positive image SMART wants each and every passenger to experience.

*Prior to the start of each daily service:*

- i. Vehicles shall be cleaned and sanitized.



- ii. Interiors shall be clean with floors swept and mopped (including step wells) and all debris removed and disposed of.
- iii. Interior stanchions, grab bars, and dash shall be wiped down.
- iv. Clean interior windows, as necessary.
- v. Ensure that vehicles have fully operational air conditioning and heating.
- vi. Ensure that vehicles have fully operational wheelchair ramps and lifts, securement belts, and flip seats (if applicable).
- vii. Ensure that vehicles are free of body damage, have no missing or unpainted panels.
- viii. Ensure vehicles are free of graffiti on the exterior and interior.
- ix. Ensure all safety items (e.g. lights, brakes, horn, tires, steering mechanism, windshield wipers, rear vision mirrors, coupling devices, wheels and rims, wheelchair tie downs, seat belts, emergency exits, all emergency equipment, etc.) are fully operational.

*Prior to the start of each trip:*

- i. All high touch surfaces will be wiped down, cleaned, and disinfected after each trip to keep the vehicle sanitized.

*Exterior Vehicle Cleaning:*

- i. Vehicle exteriors shall be washed once per week, at a minimum.
- e. Smoking is strictly prohibited inside any service vehicle at any time. The prohibition includes all: tobacco, cigarette, marijuana or e-cigarettes (“vaporizers”).

**D. Fare Structures & Payment Methods**

**a. Fare Structure:**

Fares will be initially set at \$1.50 or Free with SMART Transfer. Fares are subject to change by SMART.

**b. Payment Method:**

Payment methods riders may use to pay for rides include:

- SMART’s Microtransit Application (RidePingo from The Routing Company).
- Cash Onboard
- Clipper Card (As Available). SMART is working with Clipper to allow payment via their system for this service. If Clipper use

becomes available for this service during the course of this Agreement, SMART will provide the readers.

Although the majority of fares will be through the trip booking software, the Service Provider will be required to receive cash fares as needed. The rider will be able to select cash fare as a payment option when the trip is booked.

For walk-on riders, the driver shall record the rider as making cash payment. The microtransit software will track fare payment revenue by type. Service Provider will note the total cash received, as reported by the software, on the monthly invoice as a credit against the invoiced amount. Service Provider will be responsible for ensuring that cash fare payments are securely tracked and deposited. Any discrepancy between the actual cash received and anticipated cash revenue based on boardings will be the responsibility of the Service Provider.

#### E. Scheduling and Dispatch Software Information

- a. SMART will be responsible for providing scheduling and dispatch software that will offer a trip booking and scheduling platform for riders, dispatchers, and operators. SMART has partnered with The Routing Company for these applications.
- b. SMART will be responsible for training the Service Provider and its operators on how to use the software.
- c. SMART will be responsible for coordinating technical support-related issues with the scheduling and dispatch software company.

#### F. Vehicle Operator Requirements

- a. All vehicle operators must be employees (full or part-time) of the Service Provider. The Service Provider may not sub-contract with individuals to execute trip assignments.
- b. All vehicle operators must read, write, and speak English fluently. Spanish-speaking vehicle operators are desired.
- c. All vehicle operators must be in continuous possession of a valid driver's license required for the vehicle type they are driving, a California DMV Transit Certificate, passenger endorsement, air brake endorsement, and VTT (as applicable).
- d. All vehicle operators shall be well groomed, clean and neat in appearance.
- e. All vehicle operators shall wear an identification name badge while on duty. The badge shall be visible at all times and display the operator's picture, name, and employee ID.

- f. All vehicle operators shall be in uniform and strictly comply with the Service Provider's dress code, which must be approved by SMART. Consideration for safety must be applied to all dress code components.
- g. No colognes or perfumes are allowed on drivers while performing duties.
- h. All vehicle operators shall be sensitive to passenger's needs. Operators shall be good with people and calm in the face of traffic and stressful conditions.
- i. All vehicle operators shall not have more than two moving violations in the past five years and no DWI/DUI convictions within the last seven years.
- j. All vehicle operators must pass Federal Drug and Alcohol Testing regulations. The Service Provider's Drug and Alcohol testing program and reports are subject to SMART audit at any time to ensure compliance with Federal, State, and local laws and regulations.
- k. Service Provider will conduct individual assessments of each vehicle operator applicant/employee's conviction history in accordance with applicable state and federal laws and shall confirm to SMART that it has done so and that it determined the applicant/employee should not be disqualified from providing service to SMART based upon that conviction prior to assigning any individual to operate vehicles for SMART.

#### G. General Safety Requirements

- a. Service Provider is responsible for the safety and security of passengers at all times during operations.
- b. Service Provider shall immediately report to SMART any safety issues.

#### H. Administrative and Personnel Requirements

- a. Service Provider is responsible for:
  - i. The hiring, training, performance managing, and certification of all personnel, including vehicle operators.
  - ii. Furnishing tablets with corresponding data plans to operators and administration personnel as needed to operate the microtransit software onboard the vehicle. The software requires an internet enabled IOS or Android 7+ tablet.
  - iii. Furnishing radios to its drivers to use.
  - iv. Maintaining administrative procedures and all financial records.

- v. Immediately reporting to the SMART Manager any safety issues or rider accidents/incidents.
- vi. Reporting all customer service issues to the SMART Manager within one business day.
- vii. Maintaining, cleaning, and storing all service vehicles and related equipment needed to support the services required under this Agreement.
- viii. All facilities, equipment, and materials needed to provide maintenance and administrative support for the service vehicles and the Service Provider's personnel.
- ix. Monitoring daily operations and oversighting driver compliance.
- x. Collecting, reconciling, and depositing cash revenue collected onboard.
- xi. Reporting data to the SMART Manager on a monthly, quarterly, and year-to-date basis.

Monthly and Year-to-Date Reporting shall include:

- 1. Executive Summary
- 2. Route Ridership Reports
- 3. Fare Collections Reports
- 4. Monthly Action Item List
- 5. Bicycle Count Reports
- 6. Monthly Maintenance Report
  - a. Details the following:
    - i. Service Summary
    - ii. Incident Report Summary
    - iii. Rider Inquiries and Complaints
    - iv. Driver Schedules
    - v. In Service Vehicle Report
    - vi. Mileage Reports
    - vii. Fuel Efficiency and Consumption Reports
- 7. Accounting Reports & Backup Data
- 8. On-Time Performance Reports
- 9. Capacity Utilization
- 10. Dispatch Report
  - a. Detail the following:
    - i. Driver Route Assignment
    - ii. Driver Vehicle Assignment
    - iii. Replacement Driver Report
    - iv. Any anomalies to regular daily practices

11. Route Scorecards

12. Run Events

Additionally, records retention and reporting as required by the Federal Transit Administration (FTA), which includes:

1. Maintenance records
2. National Transit Database (“NTD”) statistics
3. Safety & Security
4. Drug & Alcohol
5. Incident / Accident Records
6. DBE Reporting
7. Equal Opportunity Employer Reporting

Quarterly Reporting shall include:

1. Executive Summary
2. Quarterly Financial Reports
3. Major Accomplishments throughout the quarter
4. Quarterly and Annual Trend Reporting
5. Performance Metrics
6. Next Quarter and Roadmap for long-term planning

- xii. Assist SMART, as requested, in distributing passenger notices, cooperate and participate in marketing promotions, advertising, and other public relations. SMART shall be the exclusive public media spokesperson in connection with this Microtransit Service. Under no circumstances shall Service Provider or its employees be permitted to distribute any unauthorized printed or written materials pertaining to SMART’s Microtransit service without written permission from SMART.

#### I. Key Performance Indicators

- a. The following Key Performance Indicators will be used to evaluate the Operator’s performance.
  - i. On-Time Performance
  - ii. Missed Trips
  - iii. Total Rides Carried
  - iv. Rider Satisfaction
  - v. Road Calls
- b. Service Provider shall participate in meetings (remote or in-person) with the SMART Management team on an as-needed basis to discuss Key Performance Indicators and service delivery performance.

#### J. SMART’s Responsibilities

- a. SMART is responsible for:
  - i. Service Provider Management and Contract Oversight
  - ii. Planning and Designing of new programs and services
  - iii. Setting fares, service hour modifications (as mutually agreed upon by both parties) and service area modifications.
  - iv. Coordination with local and regional governmental agencies and other advisory/stakeholder groups.
  - v. Advertising, promoting, and public relations activities relating to SMART's Microtransit Service.
  - vi. SMART shall furnish all schedules, maps, signage, and other printed materials required for marketing the services.
  - vii. Furnishing and supporting the Dispatch and Scheduling software.

#### **IV. Acceptance Criteria**

All work performed under this Agreement will be reviewed by the SMART Manager to ensure work conforms to the requirements of this Agreement.

## EXHIBIT B SCHEDULE OF RATES

Service Provider shall be paid at an all-inclusive hourly rate based on “Service Hours” as identified in the below rate tables. “Service Hours” are defined as the in-service hours for the SMART shuttle services, regardless of whether a passenger is on board. The rates in the below tables are all inclusive of operator wages and benefits, overhead, administration, vehicles, vehicle maintenance, training, insurance, permits, and any other direct or indirect cost associated with performing the services required under this Agreement. *Note: Deadhead Service Hours will not be reimbursed.*

For NTD reporting purposes, “Revenue Hours” consist of the time from the initiation of a rider pickup to the time that rider alights at their destination. Revenue hours will be tracked using SMART’s Microtransit Software provided and support by The Routing Company.

### A. Implementation Costs

There are no start-up costs associated with this operation for the initial pilot station nor any start-up costs associated with SMART adding any of the optional expansion stations.

### B. Initial Pilot

#### SONOMA-COUNTY AIRPORT STATION

Initial Term			
	Year 1 Hourly Rate	Year 2 Hourly Rate	Year 3 Hourly Rate
Vehicle Type 1	\$92.95	\$94.34	\$96.23
Vehicle Type 2	\$98.35	\$99.83	\$101.82
Vehicle Type 3	\$99.50	\$100.99	\$103.01
Vehicle Type 4	\$105.00	\$106.58	\$108.71
Vehicle Type 5	\$99.00	\$100.49	\$102.49
Optional Years			
	Optional Year 4 Hourly Rate	Optional Year 5 Hourly Rate	
Vehicle Type 1	\$98.64	\$101.10	
Vehicle Type 2	\$104.37	\$106.98	
Vehicle Type 3	\$105.59	\$108.23	
Vehicle Type 4	\$111.42	\$114.21	
Vehicle Type 5	\$105.06	\$107.68	

### C. Optional Expansion Stations

#### SANTA ROSA NORTH STATION

Initial Term			
	Year 1 Hourly Rate	Year 2 Hourly Rate	Year 3 Hourly Rate
Vehicle Type 1	\$92.95	\$94.34	\$96.23
Vehicle Type 2	\$98.35	\$99.83	\$101.82
Vehicle Type 3	\$99.50	\$100.99	\$103.01
Vehicle Type 4	\$105.00	\$106.58	\$108.71
Vehicle Type 5	\$99.00	\$100.49	\$102.49
Optional Years			
	Optional Year 4 Hourly Rate	Optional Year 5 Hourly Rate	
Vehicle Type 1	\$98.64	\$101.10	
Vehicle Type 2	\$104.37	\$106.98	
Vehicle Type 3	\$105.59	\$108.23	
Vehicle Type 4	\$111.42	\$114.21	
Vehicle Type 5	\$105.06	\$107.68	

**SANTA ROSA DOWNTOWN STATION**

Initial Term			
	Year 1 Hourly Rate	Year 2 Hourly Rate	Year 3 Hourly Rate
Vehicle Type 1	\$92.95	\$93.20	\$94.60
Vehicle Type 2	\$98.35	\$98.62	\$100.09
Vehicle Type 3	\$99.50	\$99.77	\$101.27
Vehicle Type 4	\$105.00	\$105.28	\$106.86
Vehicle Type 5	\$99.00	\$99.27	\$100.76
Optional Years			
	Optional Year 4 Hourly Rate	Optional Year 5 Hourly Rate	
Vehicle Type 1	\$96.02	\$97.46	
Vehicle Type 2	\$101.60	\$103.12	
Vehicle Type 3	\$102.78	\$104.33	
Vehicle Type 4	\$108.47	\$110.09	
Vehicle Type 5	\$102.27	\$103.80	

**ROHNERT PARK STATION**

Initial Term			
	Year 1 Hourly Rate	Year 2 Hourly Rate	Year 3 Hourly Rate
Vehicle Type 1	\$92.95	\$93.20	\$94.60



Vehicle Type 2	\$98.35	\$98.62	\$100.09
Vehicle Type 3	\$99.50	\$99.77	\$101.27
Vehicle Type 4	\$105.00	\$105.28	\$106.86
Vehicle Type 5	\$99.00	\$99.27	\$100.76
<b>Optional Years</b>			
	<b>Optional Year 4 Hourly Rate</b>	<b>Optional Year 5 Hourly Rate</b>	
Vehicle Type 1	\$96.02	\$97.46	
Vehicle Type 2	\$101.60	\$103.12	
Vehicle Type 3	\$102.78	\$104.33	
Vehicle Type 4	\$108.47	\$110.09	
Vehicle Type 5	\$102.27	\$103.80	

### COTATI STATION

<b>Initial Term</b>			
	<b>Year 1 Hourly Rate</b>	<b>Year 2 Hourly Rate</b>	<b>Year 3 Hourly Rate</b>
Vehicle Type 1	\$92.95	\$93.20	\$94.60
Vehicle Type 2	\$98.35	\$98.62	\$100.09
Vehicle Type 3	\$99.50	\$99.77	\$101.27
Vehicle Type 4	\$105.00	\$105.28	\$106.86
Vehicle Type 5	\$99.00	\$99.27	\$100.76
<b>Optional Years</b>			
	<b>Optional Year 4 Hourly Rate</b>	<b>Optional Year 5 Hourly Rate</b>	
Vehicle Type 1	\$96.02	\$97.46	
Vehicle Type 2	\$101.60	\$103.12	
Vehicle Type 3	\$102.78	\$104.33	
Vehicle Type 4	\$108.47	\$110.09	
Vehicle Type 5	\$102.27	\$103.80	

### PETALUMA NORTH STATION

<b>Initial Term</b>			
	<b>Year 1 Hourly Rate</b>	<b>Year 2 Hourly Rate</b>	<b>Year 3 Hourly Rate</b>
Vehicle Type 1	\$92.95	\$93.20	\$94.60
Vehicle Type 2	\$98.35	\$98.62	\$100.09
Vehicle Type 3	\$99.50	\$99.77	\$101.27
Vehicle Type 4	\$105.00	\$105.28	\$106.86

Vehicle Type 5	\$99.00	\$99.27	\$100.76
<b>Optional Years</b>			
	<b>Optional Year 4 Hourly Rate</b>	<b>Optional Year 5 Hourly Rate</b>	
Vehicle Type 1	\$96.02	\$97.46	
Vehicle Type 2	\$101.60	\$103.12	
Vehicle Type 3	\$102.78	\$104.33	
Vehicle Type 4	\$108.47	\$110.09	
Vehicle Type 5	\$102.27	\$103.80	

**PETALUMA DOWNTOWN STATION**

<b>Initial Term</b>			
	<b>Year 1 Hourly Rate</b>	<b>Year 2 Hourly Rate</b>	<b>Year 3 Hourly Rate</b>
Vehicle Type 1	\$92.95	\$93.20	\$94.60
Vehicle Type 2	\$98.35	\$98.62	\$100.09
Vehicle Type 3	\$99.50	\$99.77	\$101.27
Vehicle Type 4	\$105.00	\$105.28	\$106.86
Vehicle Type 5	\$99.00	\$99.27	\$100.76
<b>Optional Years</b>			
	<b>Optional Year 4 Hourly Rate</b>	<b>Optional Year 5 Hourly Rate</b>	
Vehicle Type 1	\$96.02	\$97.46	
Vehicle Type 2	\$101.60	\$103.12	
Vehicle Type 3	\$102.78	\$104.33	
Vehicle Type 4	\$108.47	\$110.09	
Vehicle Type 5	\$102.27	\$103.80	

**NOVATO SAN MARIN STATION**

<b>Initial Term</b>			
	<b>Year 1 Hourly Rate</b>	<b>Year 2 Hourly Rate</b>	<b>Year 3 Hourly Rate</b>
Vehicle Type 1	\$92.95	\$93.20	\$94.60
Vehicle Type 2	\$98.35	\$98.62	\$100.09
Vehicle Type 3	\$99.50	\$99.77	\$101.27
Vehicle Type 4	\$105.00	\$105.28	\$106.86
Vehicle Type 5	\$99.00	\$99.27	\$100.76
<b>Optional Years</b>			
	<b>Optional Year 4</b>	<b>Optional Year 5</b>	

	Hourly Rate	Hourly Rate
Vehicle Type 1	\$96.02	\$97.46
Vehicle Type 2	\$101.60	\$103.12
Vehicle Type 3	\$102.78	\$104.33
Vehicle Type 4	\$108.47	\$110.09
Vehicle Type 5	\$102.27	\$103.80

**NOVATO DOWNTOWN STATION**

Initial Term			
	Year 1 Hourly Rate	Year 2 Hourly Rate	Year 3 Hourly Rate
Vehicle Type 1	\$92.95	\$93.20	\$94.60
Vehicle Type 2	\$98.35	\$98.62	\$100.09
Vehicle Type 3	\$99.50	\$99.77	\$101.27
Vehicle Type 4	\$105.00	\$105.28	\$106.86
Vehicle Type 5	\$99.00	\$99.27	\$100.76
Optional Years			
	Optional Year 4 Hourly Rate	Optional Year 5 Hourly Rate	
Vehicle Type 1	\$96.02	\$97.46	
Vehicle Type 2	\$101.60	\$103.12	
Vehicle Type 3	\$102.78	\$104.33	
Vehicle Type 4	\$108.47	\$110.09	
Vehicle Type 5	\$102.27	\$103.80	

**NOVATO HAMILTON STATION**

Initial Term			
	Year 1 Hourly Rate	Year 2 Hourly Rate	Year 3 Hourly Rate
Vehicle Type 1	\$92.95	\$93.20	\$94.60
Vehicle Type 2	\$98.35	\$98.62	\$100.09
Vehicle Type 3	\$99.50	\$99.77	\$101.27
Vehicle Type 4	\$105.00	\$105.28	\$106.86
Vehicle Type 5	\$99.00	\$99.27	\$100.76
Optional Years			
	Optional Year 4 Hourly Rate	Optional Year 5 Hourly Rate	
Vehicle Type 1	\$96.02	\$97.46	
Vehicle Type 2	\$101.60	\$103.12	

Vehicle Type 3	\$102.78	\$104.33
Vehicle Type 4	\$108.47	\$110.09
Vehicle Type 5	\$102.27	\$103.80

**MARIN CIVIC CENTER STATION**

Initial Term			
	Year 1 Hourly Rate	Year 2 Hourly Rate	Year 3 Hourly Rate
Vehicle Type 1	\$92.95	\$93.20	\$94.60
Vehicle Type 2	\$98.35	\$98.62	\$100.09
Vehicle Type 3	\$99.50	\$99.77	\$101.27
Vehicle Type 4	\$105.00	\$105.28	\$106.86
Vehicle Type 5	\$99.00	\$99.27	\$100.76
Optional Years			
	Optional Year 4 Hourly Rate	Optional Year 5 Hourly Rate	
Vehicle Type 1	\$96.02	\$97.46	
Vehicle Type 2	\$101.60	\$103.12	
Vehicle Type 3	\$102.78	\$104.33	
Vehicle Type 4	\$108.47	\$110.09	
Vehicle Type 5	\$102.27	\$103.80	

**SAN RAFAEL STATION**

Initial Term			
	Year 1 Hourly Rate	Year 2 Hourly Rate	Year 3 Hourly Rate
Vehicle Type 1	\$92.95	\$93.20	\$94.60
Vehicle Type 2	\$98.35	\$98.62	\$100.09
Vehicle Type 3	\$99.50	\$99.77	\$101.27
Vehicle Type 4	\$105.00	\$105.28	\$106.86
Vehicle Type 5	\$99.00	\$99.27	\$100.76
Optional Years			
	Optional Year 4 Hourly Rate	Optional Year 5 Hourly Rate	
Vehicle Type 1	\$96.02	\$97.46	
Vehicle Type 2	\$101.60	\$103.12	
Vehicle Type 3	\$102.78	\$104.33	
Vehicle Type 4	\$108.47	\$110.09	
Vehicle Type 5	\$102.27	\$103.80	

**LARKSPUR STATION**

<b>Initial Term</b>			
	<b>Year 1 Hourly Rate</b>	<b>Year 2 Hourly Rate</b>	<b>Year 3 Hourly Rate</b>
Vehicle Type 1	\$92.95	\$93.20	\$94.60
Vehicle Type 2	\$98.35	\$98.62	\$100.09
Vehicle Type 3	\$99.50	\$99.77	\$101.27
Vehicle Type 4	\$105.00	\$105.28	\$106.86
Vehicle Type 5	\$99.00	\$99.27	\$100.76
<b>Optional Years</b>			
	<b>Optional Year 4 Hourly Rate</b>	<b>Optional Year 5 Hourly Rate</b>	
Vehicle Type 1	\$96.02	\$97.46	
Vehicle Type 2	\$101.60	\$103.12	
Vehicle Type 3	\$102.78	\$104.33	
Vehicle Type 4	\$108.47	\$110.09	
Vehicle Type 5	\$102.27	\$103.80	

**EXHIBIT C**  
**FTA & DOT REQUIREMENTS**

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

**1. General.**

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

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

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

*Applicability: All Contracts*

Contractor shall comply with the following requirements:

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

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

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

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

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

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

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

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

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

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

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

### **3. ADA Access**

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

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

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

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

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



FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11. Domestic preferences for procurements. The bidder or offeror must submit to SMART the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

#### Required Use of American Iron, Steel, Manufactured Products, and Construction Materials

Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

- 1) all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- 2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- 3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

#### *Waivers:*

When necessary, recipients may apply for, and the Agency may grant, a waiver from these requirements. The Agency should notify the recipient for information on the process for requesting a waiver from these requirements.

- a) When the Federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that:
  - 1) applying the domestic content procurement preference would be inconsistent with the public interest;

- 2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- 3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office. There may be instances where an award qualifies, in whole or in part, for an existing waiver.

#### Definitions:

“Construction materials” includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives<sup>46</sup>—that is or consists primarily of:

- Non-ferrous metals;
- Plastic and Polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- Glass (including optic glass);
- Lumber; or
- Drywall

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

## **5. Lobbying**

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

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying

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

## **6. Cargo Preference Requirements.**

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

The Contractor agrees to:

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

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

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

## **7. Charter Service.**

*Applicability: All Operations & Management Contracts*

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

provision of mass transportation.

## 8. Civil Rights.

*Applicability: All Contracts*

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

1. **Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:
  - a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
  - b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.
2. **Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
3. **Nondiscrimination on the Basis of Age.** The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.
4. **Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

## Civil Rights and Equal Opportunity

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

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

amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

5. **Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

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

## 9. Clean Air Act

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

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

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

## 10. Clean Water Act

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

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

## 11. Conformance with National ITS Architecture

*Applicability: All ITS Contracts*

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

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

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

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

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

- (1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not

less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

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

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

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

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

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



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

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

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

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

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

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

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

The certification in this clause is a material representation of fact relied upon by the SMART. If it is later determined that the contractor knowingly rendered an erroneous certification, in addition to remedies available to SMART, the Federal Government may pursue available remedies, including but not limited to

suspension and/or debarment. The Contractor agrees to comply with the requirements of 2 CFR 180 throughout the period of this contract.

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

*Applicability: All Contracts*

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

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

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

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

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

The Contractor must promptly notify SMART whenever a DBE subcontractor

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

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

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

*Applicability: All Contracts*

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

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

*Applicability: All Contracts*

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

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

*Applicability: All Contracts*

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

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

*Applicability: All Contracts*

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

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

*Applicability: All Contracts*

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

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

*Applicability: All Contracts*

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

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

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

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the SMART is located. The Contractor

must include a similar notification requirement in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

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

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

*Applicability: All Research Project Contracts*

### **Intellectual Property Rights**

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

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

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

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

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

publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

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

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

*Applicability: All Rolling Stock/Turnkey Acquisition Contracts*

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

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

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

- 1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the firm certifies compliance with Buy America, it shall submit documentation which lists  
1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
- 2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the solicitation specifications.
- 3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit a)

manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or b) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

## **25. Recycled Products.**

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

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

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

*Applicability: All Contracts*

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

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

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

## **27. Prompt Payment.**



*Applicability: All Contracts*

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

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

*Applicability: All Contracts*

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

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

- (b) **Distracted Driving, Including Text Messaging While Driving.** Contractor agrees to comply with Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," 23 U.S.C. §402, U.S. DOT Order 3902.10, "Text Messaging While Driving", and U.S. DOT Special Provision pertaining to Distracted Driving:
- a. **Safety.** The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle the company owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Agreement, or when performing any work for or on behalf of SMART.
  - b. Contractor agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

**29. Seismic Safety.**

*Applicability: All A&E and Construction Contracts*

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

### **30. Transit Employee Protective Agreements**

*Applicability: All Transit Operations Contracts*

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

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

revision thereto.

- iv. The Contractor also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance by FTA.

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

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

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

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

*Applicability: All Transit Operations Service Contracts*

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

### **33. Termination.**

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

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

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

property in its possession belonging to SMART, the Contractor will account for the same, and dispose of it in the manner SMART directs.

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

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

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

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

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

(f) Termination for Default (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.

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

*Applicability: All Contracts*

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

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

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

*Applicability: All Contracts*

#### Rights and Remedies of SMART

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

#### Rights and Remedies of Contractor

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

#### Remedies

Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other

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

#### Disputes

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

#### Performance during Dispute

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

#### Claims for Damages

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

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

*Applicability: All Contracts*

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

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

*Applicability: All Contracts*

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

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

*Applicability: All Contracts*

Contractor shall comply with the following requirements:

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

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

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

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

*Applicability: All Contracts*

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

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

*Applicability: All Rolling Stock Contracts*

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

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

*Applicability: All Contracts*

A. Contractor certifies that it does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that it is not being paid in a timely manner pursuant to an agreement

with the authority responsible for collecting the tax liability; and

- B. Contractor certifies that it was not convicted of felony criminal violation under any Federal law within the preceding twenty-four (24) months.

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

*Applicability: All Research and Development Contracts*

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

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

*Applicability: All Contracts*

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

#### **44. Domestic Preferences for Procurements**

*Applicability: All Contracts*

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

For the purposes of this section:

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

#### **45. Trafficking in Persons**



*Applicability: All Contracts*

The contractor agrees that it and its employees that participate in the Recipient's Award, may not:

- (a) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect;
- (b) Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or
- (c) Use forced labor in the performance of the Recipient's Award or subagreements thereunder.

#### **46. Severability**

*Applicability: All Contracts*

The Contractor agrees that if any provision of this Agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.



April 19, 2023

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

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

**Kate Colin**  
Transportation Authority of Marin

**Chris Coursey**  
Sonoma County Board of Supervisors

**Rachel Farac**  
Transportation Authority of Marin

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

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

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

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

**David Rabbitt**  
Sonoma County Board of Supervisors

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

**Mary Sackett**  
Marin County Board of Supervisors

**Eddy Cumins**  
General Manager

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

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

**SUBJECT:** Approve to extend the suspension of parking fees during daytime hours and allow overnight parking for a nominal fee

Dear Board Members:

### RECOMMENDATIONS

Approve Resolution No. 2023-11, to extend the suspension of parking fees during daytime hours and allow overnight parking for a nominal fee.

### SUMMARY

In March of 2022 the SMART Board of Directors suspended parking fees at SMART owned and operated Park-n-Ride lots through August 2022. Resolution No. 2022-27 extended that suspension through June 30, 2023.

We would like to extend the suspension of fees during daytime hours (5:01am – 11:59pm) through June 30, 2024.

Currently, SMART does not allow parking in SMART owned and operated lots between the hours of 12:00am and 5:00am. However, with the start of an on-demand shuttle service at the Airport Station parking lot in Sonoma County, riders will have an increased need to park overnight at our other stations. Riders have also expressed the desire to park at SMART stations to take the ferry into San Francisco overnight. The attached resolution allows overnight parking at SMART parking lots for a nominal fee of \$5.00 per evening. SMART would monitor this program to ensure ample parking during the day for our daytime customers and to ensure that it is not being abused.

**FISCAL IMPACT:** It is anticipated that there will be a small increase in revenues associated with the fee for overnight parking, but it is anticipated to be minimal.

Sincerely,  
/s/  
Heather McKillop  
Chief Financial Officer

Attachment(s): Resolution No. 2023-11

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT, STATE OF CALIFORNIA, CONTINUING THE SUSPENSION OF PARKING FEES DURING THE DAYTIME AND ALLOWING OVERNIGHT PARKING FOR A FEE AT ALL SMART OWNED AND OPERATED PARK-N-RIDE THROUGH JUNE 30, 2024**

---

**WHEREAS**, Resolution No. 2022-07 suspended parking fares at SMART owned and operated park-n-rides through August 2022; and

**WHEREAS**, Resolution No. 2022-27 continued the suspension of parking fares at SMART owned and operated park-n-rides through June 30, 2023; and

**WHEREAS**, SMART would like to continue the suspension of parking fares during daytime hours at SMART owned and operated park-n-rides through June 30, 2024; and

**WHEREAS**, SMART would like to allow parking during the overnight hours and charge a nominal fee of \$5.00 between the hours of 12:00am and 5:00am through June 30, 2024;

**NOW, THEREFORE, BE IT RESOLVED** the Board approves the continuation of suspended parking fees during daytime hours and allow overnight parking between the hours of 12:00am and 5:00am for a \$5.00 fee in SMART owned and operated park-n-rides through the end of the fiscal year, June 30, 2024.

**PASSED AND ADOPTED** at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 19th day of April 2023, 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



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

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

**Kate Colin**  
Transportation Authority of Marin

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**Mary Sackett**  
Marin County Board of Supervisors

**Eddy Cumins**  
General Manager

April 19, 2023

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

**SUBJECT:** Annual Report for Fiscal Year 2021-22

Dear Board Members:

**RECOMMENDATION:** Accept Annual Report for Fiscal Year 2021-22

**SUMMARY:**

SMART's Ordinance No. 2008-01, requires that the Chief Financial Officer of SMART to issue an annual report that sets forth a) the amount of funds collected and expended; and (b) the status of any project component authorized to be funded in the 2008 Expenditure Plan adopted by the District.

The Annual Report being presented today meets those requirements.

**FISCAL IMPACT:** There is no fiscal impact.

Sincerely,

/s/

Heather McKillop  
Chief Financial Officer

Attachment(s): Annual Report Fiscal Year 2021-2022

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# ANNUAL REPORT

FY 2021-2022

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT



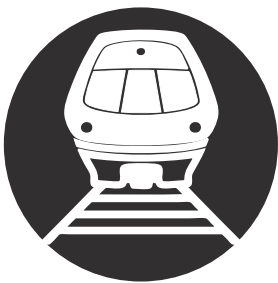
5401 Old Redwood Highway Suite 200  
Petaluma, California, 94954

**SonomaMarinTrain.org**





# ABOUT



Sonoma-Marín Area Rail Transit (SMART) is the North Bay's passenger rail service providing a safe, reliable and congestion-free transportation option for Marin and Sonoma counties. The current 45-mile system includes stations in the Sonoma County Airport area, Santa Rosa, Rohnert Park, Cotati, Petaluma, Novato, San Rafael, and Larkspur. SMART's system also includes a bicycle and pedestrian pathway along the rail corridor.

Future extensions are planned for Windsor, Healdsburg and Cloverdale. The full Sonoma-Marín corridor project will provide 70 miles of passenger rail service and a bicycle-pedestrian pathway, connecting people with jobs, schools, retail hubs and housing.



# TABLE OF CONTENTS

SECTION

**01**

Governance

SECTION

**02**

Vision & Mission

SECTION

**03**

Customer Experience

SECTION

**04**

Financials

SECTION

**05**

Projects





Larkspur Station is the southernmost station in SMART's rail network, providing a vital link to the communities in Southern Marin County.



# Message from the Chair



The Fiscal Year 2021/2022 marked a period of recovery and growth for SMART. In November 2021, Eddy Cumins joined us as the new General Manager, collaborating with the Board of Directors to create SMART's inaugural vision and mission statement. Our focus on enhancing the customer experience led to a increased weekday service to 36 trips per day, reintroduced Sunday service, and eliminated parking fees at all SMART-owned park-n-ride facilities.

Moreover, SMART took over ownership and operations for freight services, successfully commencing operations in March 2022, serving to three clients in Petaluma. As the pandemic restrictions eased, we ramped up our outreach efforts, from participating in fairs and festivals to educating the public on train safety.

Looking ahead, SMART is committed to building on our successes and continuing to provide reliable, safe, and sustainable transportation solutions for our community.

May we keep moving forward together!



# SECTION 01

SMART is governed by a 12-member Board consisting of elected and appointed officials as specified in AB 2224. Members serve staggered 4-year terms.

## FY 2022 SMART BOARD OF DIRECTORS

**David Rabbitt, Chair**

Sonoma County Board of Supervisors

**Barbara Pahre, Vice Chair**

Golden Gate Bridge, Highway/Transportation District

**Judy Arnold**

Marin County Board of Supervisors

**Melanie Bagby**

Sonoma County Mayors' and Councilmembers Association

**Kate Colin**

Transportation Authority of Marin

**Damon Connolly**

Marin County Board of Supervisors

**Chris Coursey**

Sonoma County Board of Supervisors

**Debora Fudge**

Sonoma County Mayors' and Councilmembers Association

**Patty Garbarino**

Golden Gate Bridge, Highway/Transportation District

**Dan Hillmer**

Marin County Council of Mayors and Councilmembers

**Eric Lucan**

Transportation Authority of Marin

**Chris Rogers**

Sonoma County Mayors' and Councilmembers Association

# Governance

## CITIZEN'S OVERSIGHT COMMITTEE



As required by the 2008 Expenditure Plan that accompanied Measure Q, the Board of Directors established the Citizen's Oversight Committee. Its responsibilities, as specified in both the 2008 and 2020 Expenditure Plans, involve evaluating and contributing to SMART's Strategic Plans. The Board of Directors determines the composition and obligations of the committee, including its membership, duties, and terms, which it approves.

**Russ Colombo, Chair**  
**Steve Birdlebough**  
**Peter Breen**  
**Dennis Harter**  
**Patricia Kendall**  
**David Oster**  
**Steve Rabinowitsh**  
**Tanya Narath, alternate**  
**Julia Violich, alternate**





## SECTION 02



# Vision & Values

SMART's General Manager, Eddy Cumins, joined the team on November 30, 2021. Before joining SMART, Cumins served as Chief Operating Officer for the Utah Transit Authority (UTA). After a 20-year military career in the United States Air Force, he began his career at UTA. During his distinguished time in the Air Force, Eddy served in various positions throughout California, Alaska, Portugal, Utah, and Japan. Eddy holds a Master of Science Degree in Organizational Leadership from Colorado State University and a Bachelor of Science Degree in Human Resource Development from Southwestern College. "This is a terrific hire for SMART," said Dave Rabbitt, Chair of the SMART Board of Directors.



## MESSAGE FROM THE GENERAL MANAGER

I'm really excited to be a part of the SMART team and use my experience in transit operations to lead the organization towards success.

Our biggest challenge right now is getting people to ride the train again after the pandemic. Since many people are still working from home, we need to come up with new and creative ideas to encourage them to use our services.

My top priorities include improving transportation in Sonoma and Marin counties, strengthening SMART's relationship with the local community and other transit partners, and making sure SMART works well with other types of transportation.

In 2023, I'll be working hard to get funding for our plans to expand and find new ways to get more people on board.



# Values



## VISION

**Smarter Transportation for a Smarter Tomorrow.** SMART envisions an innovative transportation system that provides integrated mobility solutions, promotes sustainable growth, and enhances quality of life.



## MISSION

**We Connect Communities.** SMART provides safe, reliable, and environmentally responsible transportation options.

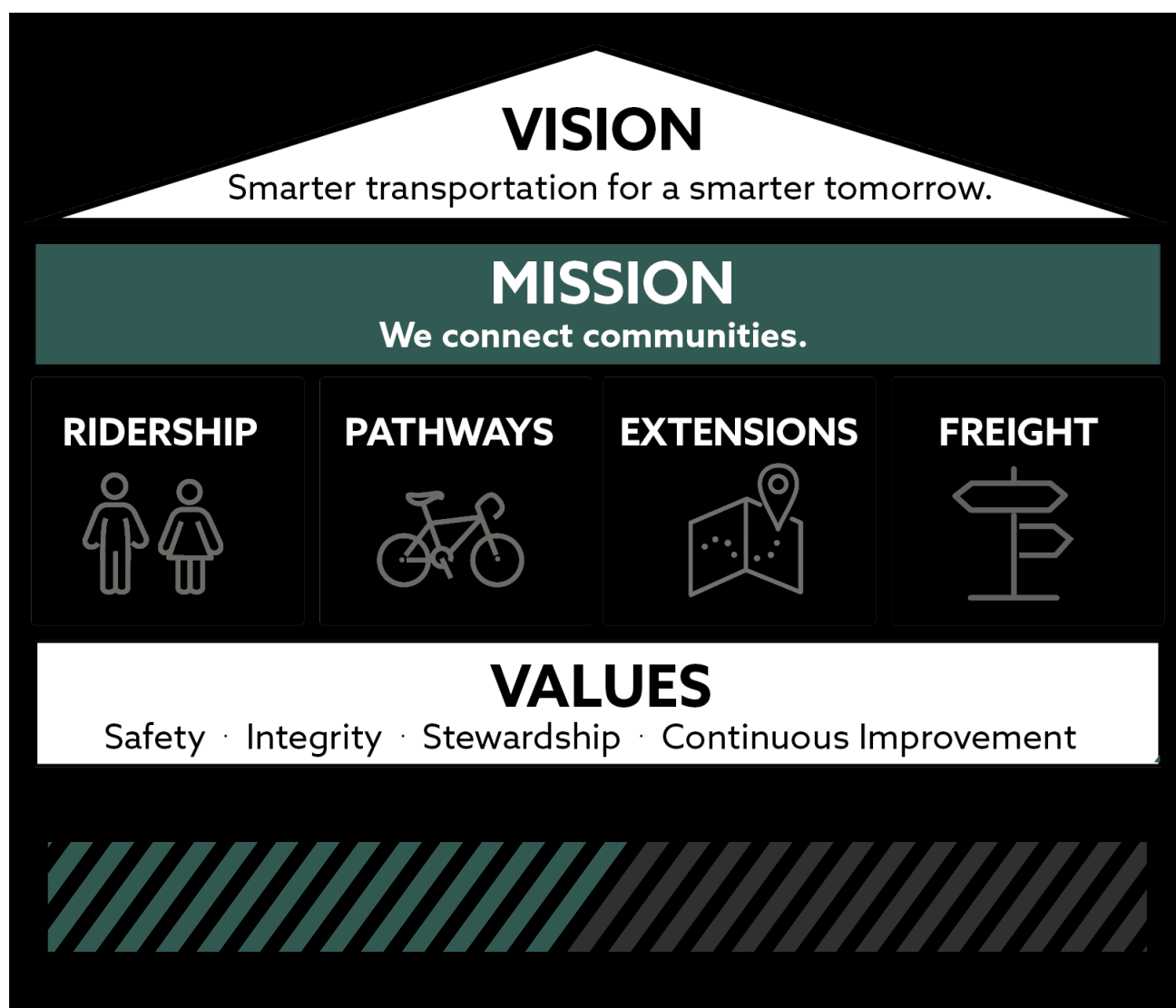


## VALUES

**Safety, Integrity, Stewardship, & Continuous Improvement.**

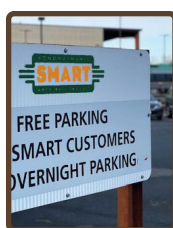
## PLANNING FOR THE FUTURE

SMART has taken important steps to prepare for its future by developing a Mission, Vision, Objectives, and values. In April of 2022, SMART held four Strategic Planning Listening Sessions to determine how to move forward. During these sessions, participants discussed key topics like ridership, pathways, extensions, and freight. SMART gathered feedback from over 1000 survey responses and 60 emails, and close to 200 members of the public attended the sessions.



## SECTION 03

As the world continues to emerge from the pandemic, SMART has been committed to improving the customer experience by restoring services that were previously suspended. With safety measures in place, we have been working tirelessly to bring back the full range of transportation options that our riders have come to rely on.



**03.16.22**

The SMART Board approved free parking in all the SMART owned park & ride lots.

**05.01.22**

Sunday service was restored. SMART added two more trips per day on Saturday and Sundays.

**05.01.22**

Real-Time information regarding SMART trains is now available on Google Maps.





# Enhancing the Customer Experience



**06.04.22**

The Muir Woods shuttle pickup location was moved to the Larkspur Ferry Terminal. The new location provides much easier access for SMART riders.

**06.13.22**

Ten additional trips were added during the week-day for a total of 36 weekday trips.

**06.12.22 &  
06.26.22**

Added Giant's game service.



## SECTION 04





# Financials

The financial management practices at SMART ensure the financial viability and health of the organization which allows us to provide the transportation services for the residents of Marin and Sonoma Counties.

The financial information presented is divided into passenger rail and freight rail.



# Passenger Rail

**Total revenues for FY 2022 were \$70.7 million.** Revenues were higher than anticipated by \$3.7 million (approximately 6%) of which \$3.1 million was due to higher than anticipated sales and use tax revenue.

Expenditures were lower than budgeted due to vacancy savings and overall lower expenditure patterns.

For a copy of SMART's Audited Comprehensive Financials Report for the Fiscal Year ending June 30, 2022, visit our website at <https://sonomamarintrain.org/financial-documents>.



Services & supplies were

**\$8.3M lower  
than projected**

**↓ 47%**



\$70.7 million in  
total revenues.

**\$70.7M**

**Higher  
Sales &  
Use Tax  
Revenue**

**\$3.1M**

Higher than anticipated  
sales and use tax revenue.



Salaries & benefits were

**16% ↓ lower  
than  
projected**  
(or \$3.9 M)



## EXPENSES

### LABOR

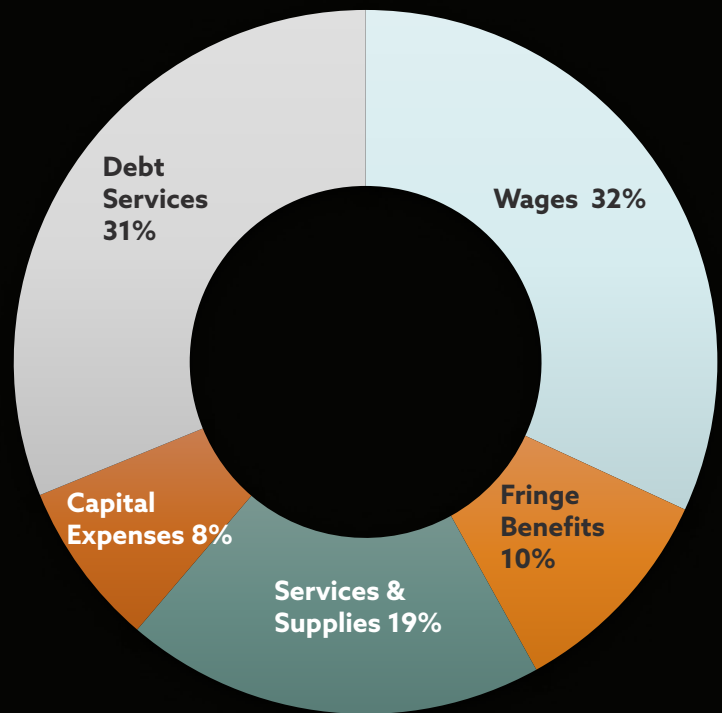
Wages	\$15,301,621
Fringe Benefits	<u>\$4,821,489</u>
Total Labor	\$20,123,110

### NON-LABOR

Service & Supplies	\$9,267,501
Capital Expenses	<u>\$3,636,472</u>
Total Non-Labor	\$12,903,973

Total	\$33,027,083
Debt Service	\$14,958,269
Total Expenditures	\$47,985,352
Fund Balance Increase	<u>\$22,718,257</u>

Total	\$70,703,609
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## REVENUES

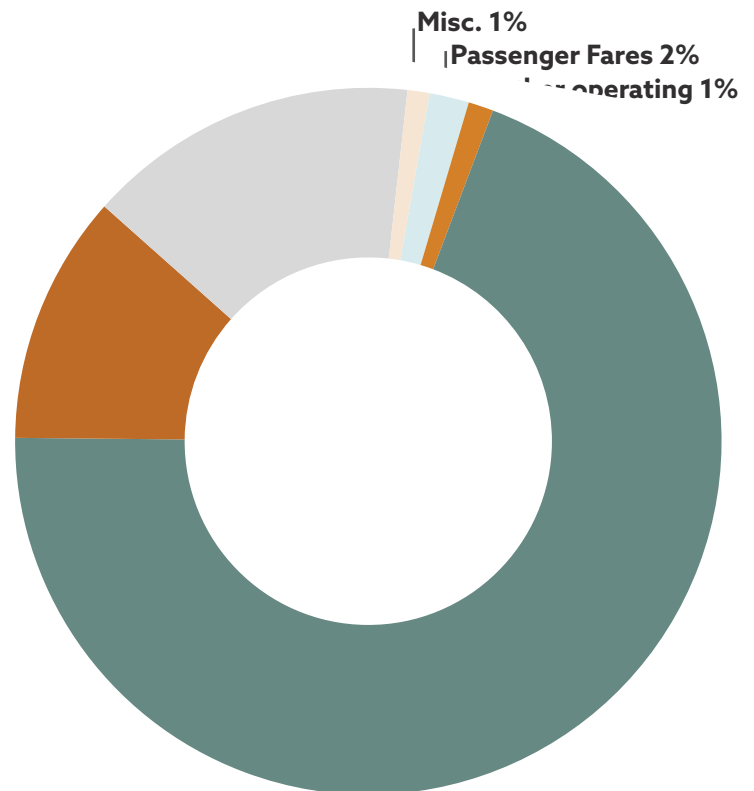
### Operating Revenues

Passenger Fares	\$1,283,111
Other Operating Revenue	<u>\$813,274</u>
Total Operating Revenue	\$2,096,385

### Non-Operating Revenues

Sales & Use Tax	\$49,074,830
State Operating Assistance	\$8,069,751
Federal Operating Assistance	\$10,751,080
Miscellaneous Revenues	\$56,141
Other Governmental Revenues	\$227,187
Interest Earned	<u>\$428,23</u>
Total Non-Operating Revenues	\$68,607,22

Total Revenues	<u>\$70,703,609</u>
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Diesel Multiple Units ((DMUs) parked at the Regional Operations Center (ROC) located at 1130 Airport Boulevard, Santa Rosa, California.



# Short Range Transit Plan

In October 2021, the SMART Board of Directors made a significant milestone by adopting SMART's inaugural Short-Range Transit Plan (S RTP). The S RTP sets forth a comprehensive blueprint that outlines SMART's strategic vision and objectives for the next eight years, spanning from July 1, 2021, through June 30, 2029.

To effectively execute their planning and programming responsibilities, Metropolitan Transportation Commission (MTC) requires that each transit operator in its region which received federal funding prepare, adopt, and submit to MTC a Short-Range Transit Plan.

The document serves as a management and policy document which assess the financial capacity to carry out proposed levels of operations and the associated capital improvements

The S RTP is the first one that SMART has prepared and covers the period of Fiscal Year 2022 – Fiscal Year 2029. The S RTP was based on Capital Plan that was adopted in April 2021.

Overall, the adoption of SMART's first S RTP marks an important step forward in the agency's evolution, providing a clear direction and a framework for success in the years to come.

A copy of the plan can be found on SMART's website at <https://sonomamarintrain.org/financial-documents>.



**This way forward!**

# Freight Rail

SMART started operating Freight service for the first time on March 1, 2022. Sixteen cars were moved for three customers. Service was operated by a third-party while SMART went through the recruitment and hiring process for new freight employees. In-house operations began on July 1, 2022.

Total revenues for FY 2022 were \$5.5 million with 89% of the funds coming from a state grant that was used primarily for the purchase of freight rights from the NWPCo.

**3.1.22**  
Freight service launched

In-house operations began on  
**JULY 01, 2022**

 **16** Cars were moved



**\$5.5 M**

\$5.5 million in total revenues.



## EXPENSES

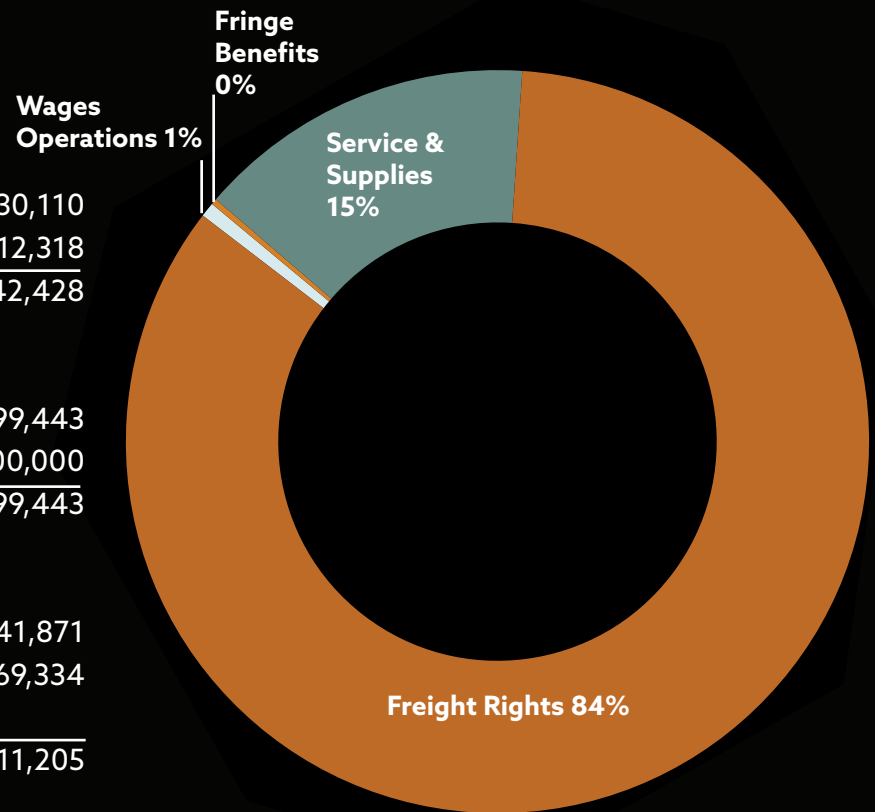
### LABOR

Wages	\$30,110
Fringe Benefits	\$12,318
Total Labor	<u>\$42,428</u>

### NON-LABOR

Service & Supplies	\$699,443
Capital Expenses	\$4,000,000
Total Non-Labor	<u>\$4,699,443</u>

Total Expenditures	\$4,741,871
Fund Balance Increase	\$769,334
Total	<u>\$5,511,205</u>



## REVENUES

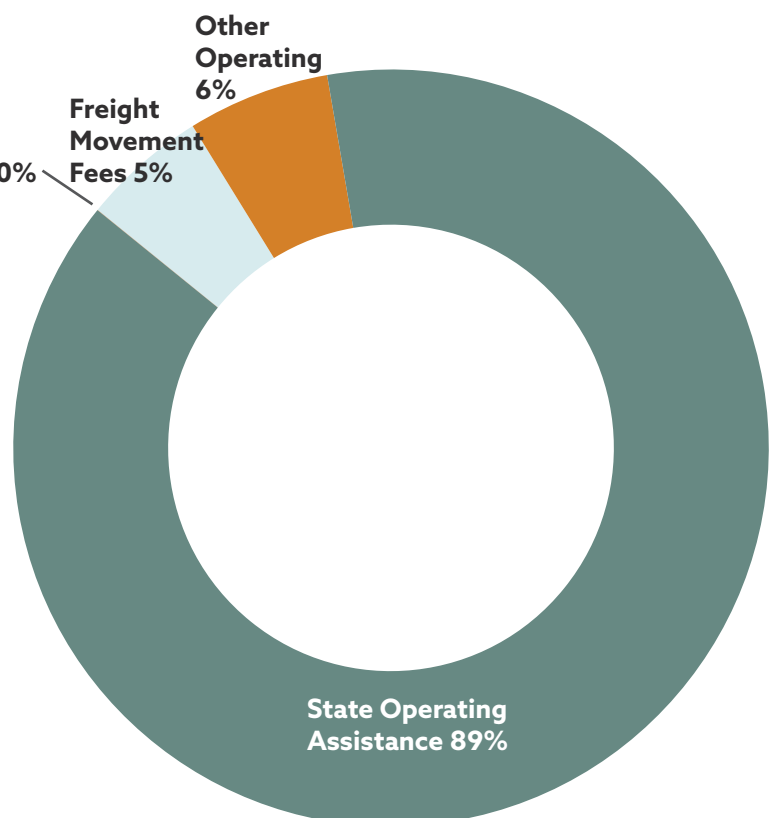
### Operating Revenues

Freight Movement Fees	\$295,433
Other Operating Revenue	\$335,734
Total Operating Revenue	<u>\$631,167</u>

### Non-Operating Revenues

State Operating Assistance	\$4,879,561
Interest Earned	\$477
Total Non-Operating Revenues	<u>\$4,880,038</u>

Total Revenues	<u>\$5,511,205</u>
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## SECTION 05

In 2021-2022, SMART has been actively engaged in outreach work to promote its passenger service. The year started with the celebration of the fourth year of SMART passenger service on August 25, 2021.





# Outreach

## 1<sup>ST</sup> IN-PERSON EVENT

Novato Festival of Art,  
Wine & Music



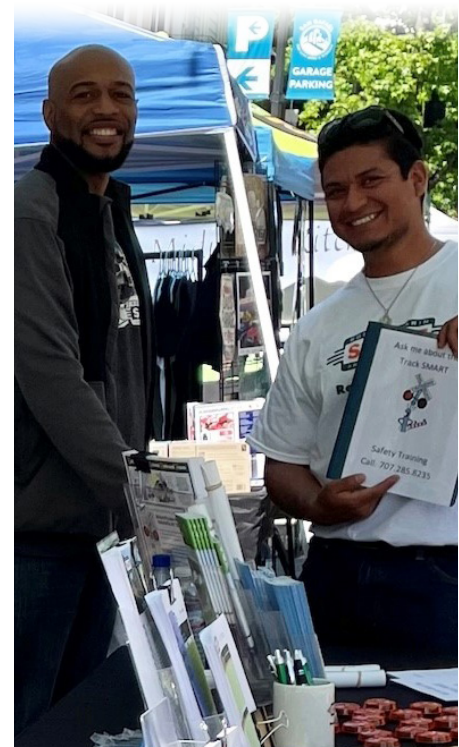
## BUTTER & EGGS PARADE

750 BOOTH VISITORS



VISITED  
WITH  
PEOPLE

700



## PARTICIPATED IN MAY MADNESS



## 6<sup>TH</sup> ANNUAL HOLIDAY TOY DRIVE





# Projects - Extensions

Construction was suspended on the extension of the rail line between the Sonoma County Airport Station and Windsor. Regional Measure 3 (RM3) Bridge Toll funding has not been able to be distributed due to a lawsuit filed against the Metropolitan Transportation Commission (MTC). In October of 2020, the State Supreme Court agreed to hear the appeal case, which will continue to delay the funding until the outcome is determined by the court. SMART continues to pursue additional funding sources to complete this work.



## PATHWAYS

In February 2022, SMART awarded a design contract to BKF Engineers for engineering design and permitting to prepare construction and environmental permit documents for seven sections of Non-Motorized Pathway (NMP) in Sonoma County, a total of approximately seven miles for \$2,555,592.

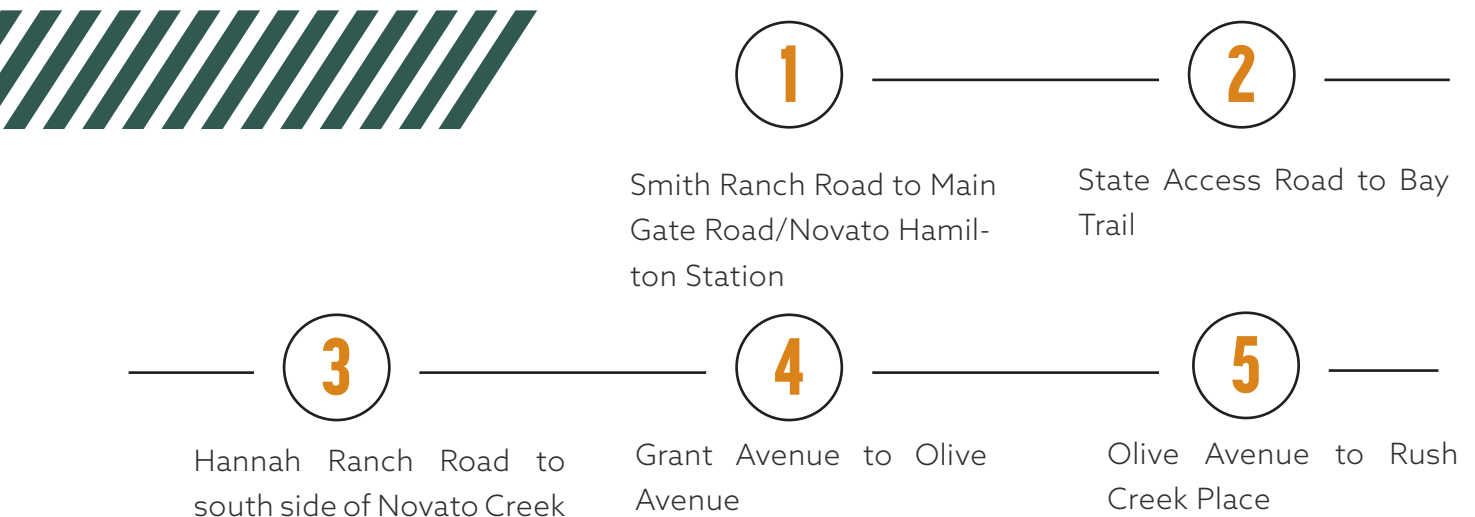
The seven sections of pathway within this contract include the following:



## PATHWAYS

In March 2022, SMART awarded a design contract to CSW Stuber- Stroeh Engineering Group, Inc. (CSW|ST2) for engineering design and permitting to prepare construction and environmental permit documents for five sections of Non-Motorized Pathway (NMP) in Marin County, a total of approximately six miles for \$2,466,130.

The five sections of pathway within this contract include the following:





Sonoma-Marin Area Rail Transit  
5401 Old Redwood Hwy., Suite 200  
Petaluma, CA 94954  
[www.sonomamarintrain.org](http://www.sonomamarintrain.org)



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

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

**Kate Colin**  
Transportation Authority of Marin

**Chris Coursey**  
Sonoma County Board of Supervisors

**Rachel Farac**  
Transportation Authority of Marin

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

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

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

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

**David Rabbitt**  
Sonoma County Board of Supervisors

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

**Mary Sackett**  
Marin County Board of Supervisors

**Eddy Cumins**  
General Manager

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

April 19, 2023

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

**SUBJECT:** Approve extending the reduction of fares through June 30, 2024 and reduce the 31-day pass cost

Dear Board Members:

**RECOMMENDATIONS:**

Approve Resolution No. 2023-10, to extend the reduction of fares through June 30, 2024 and further reduce the 31-day pass to \$117.00.

**SUMMARY:**

To make SMART more affordable and attract more riders, in May of 2021, SMART lowered overall fares by approximately 40%. Each zone traveled is \$1.50 for adults and \$0.75 for seniors, youth, low-income, or those with disabilities.

SMART also offers a 31-day pass. We recently looked at the pricing of this pass based on the new "normal" of more telecommuting and less days in the office. The following chart, which reflects survey results from the Bay Area Council Economic Institute as of March 2023, shows that based on the companies surveyed the majority of employees will be coming into the office approximately three (3) days per week for the foreseeable future. This is consistent with observed trends both at the national and local level.

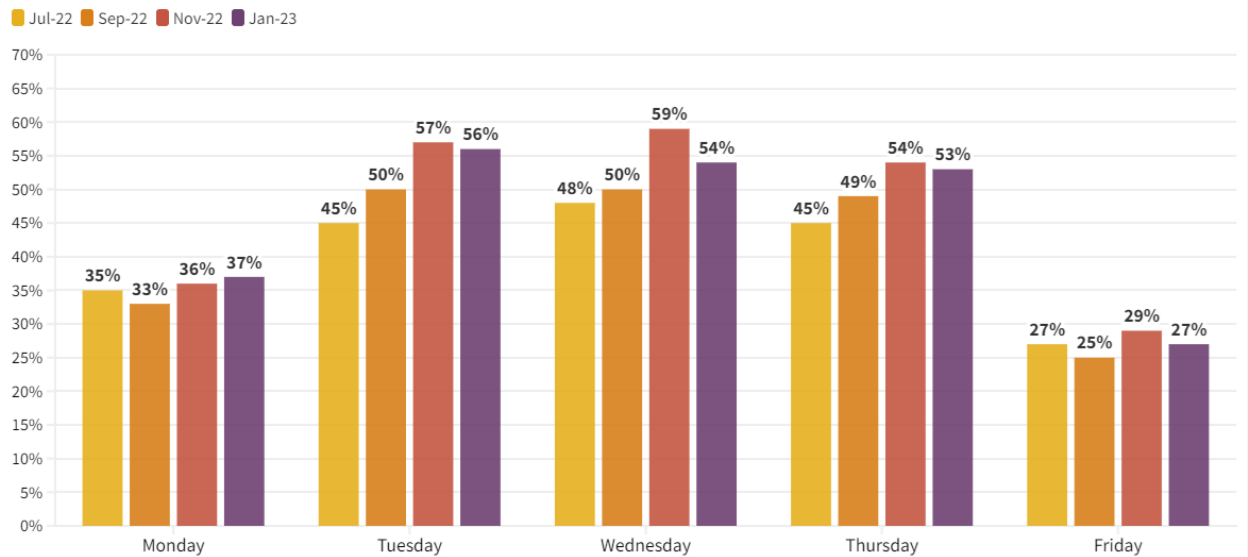
Based on this information, we are asking the Board of Directors to approve a reduction in price for the 31-day pass and base the pricing on an assumption of 3 days per week for 3 zones. This would result in the 31-day pass being priced at \$117.00 for adults and \$58.50 for seniors, youth, and those with disabilities. The fare reduction would begin on July 1, 2023 and go through June 30, 2024.

**FISCAL IMPACT:** Keeping the fares at the reduced amount had already been assumed in the fares forecast for Fiscal Year 2023 and for the Fiscal Year 2024 revenue forecast. Based on the current sales of the 31-day pass and assuming pass sales do not increase due to the reduction in cost, the foregone revenue is estimated at \$48,451 per year.



**In six months, what is your best estimate of the percentage of your Bay Area workforce will come to the workplace on each of the following days of the week?**

Percentages are averaged across responses.



Line, bar, and pie charts by Flourish team

Sincerely,

/s/

Heather McKillop  
Chief Financial Officer

Cc: Resolution No. 2022-10

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT, STATE OF CALIFORNIA, EXTENDING REDUCED FARES AND FURTHER REDUCING THE PRICE OF THE 31-DAY PASS THROUGH JUNE 30, 2024**

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**WHEREAS**, the Board adopted or modified the fare structure in February 2015, March 2015, August 2015, June 2015, January 2017, and May 2021; and

**WHEREAS**, Resolution No. 2022-07 extended the reduction of fares as originally approved by the Board through August, 2022; and

**WHEREAS**, Resolution No. 2022-27 extended the reduction of fares as originally approved by the Board through June 2023; and

**WHEREAS**, the SMART would like to extend the reduction of fares again for Fiscal Year 2024; and

**WHEREAS**, the SMART would like to reprice the 31-day pass to \$117.00 to be consistent with the changing workplace and pricing to accommodate those employees who are going into the office on a less frequent basis; and

**NOW, THEREFORE, BE IT RESOLVED** the Board approves the extension of lower fares and further reducing the 31-day pass to \$117.00 from July 1, 2023 through June 30, 2024.

**PASSED AND ADOPTED** at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 19th day of April, 2023, by the following vote:

**DIRECTORS:**

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ATTEST:

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